

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9555

LAURA M. BERRIEN, *Appellant,*

v.

ANITA POLLITZER, ET AL., *Appellees.*

Appeal from the District Court of the United States for the
District of Columbia.

*United States Court of Appeals
for the District of Columbia*

FILED AUG 29 1947

Joseph W. Stewart
CLERK

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LAURA M. BERRIEN, *Appellant*,

v.

ANITA POLLITZER, ET AL., *Appellees*.

Appeal from the District Court of the United States for the
District of Columbia.

JOINT APPENDIX.

I.

**PLEADINGS, DOCKET ENTRIES AND OTHER
PAPERS.**

1

Filed Mar 14 1947

In the District Court of the United States for the
District of Columbia

Civil Action No. 1121-47

LAURA M. BERRIEN, Investment Building, Washington, D. C.,
Plaintiff

v.

ANITA POLLITZER, 419 West 115th Street, New York City

ALICE PAUL, East Charleston, P. O., Vermont

CLARA SNELL WOLFE, 1841 Roxbury Road, Columbus 8, Ohio

MARGARET C. WILLIAMS, Barbizon Plaza, New York City

MARIE MOORE FORREST, 1319 - 34th Street, N. W.,
Washington, D. C.

GLADYS HOUSTON GREINER, Ruxton, Maryland

ELIZABETH FORBES, 1432 Park Avenue, Baltimore, Maryland

MABEL E. GRISWOLD, 1158 Sherman Avenue, Madison,
Wisconsin

LUCIA HANNA HADLEY, 144 B Street, N. E.,
Washington 2, D. C.

MIRIAM Y. HOLDEN, 57 East 78th Street, New York 21, N. Y.

FLORENCE E. KENNARD, 1701 Linden Avenue, Baltimore,
Maryland

EMMA GUFFEY MILLER, 2929 Benton Place, N. W.,
Washington, D. C.

2 MARY MURRAY, 11 Midwood Street, Brooklyn,
New York

MARY E. OWENS, 518 21st Street, Bismarck, North Dakota

AMELIA HIMES WALKER, York Road & Walker Avenue,
Govans, Maryland

DR. AGNES E. WELLS, 903 Court Street, Saginaw West Side,
Michigan

META GRACE KEEBLER, 126 C Street N. E., Washington, D. C.

PHOEBE MUNNECKE, 8100 East Jefferson Avenue,
Detroit, Michigan

DORA OGLE, 144 B Street, N. E., Washington 2, D. C.

SAMUEL L. MILLS, 520 3d Street, N. E., Washington, D. C.

OLIVE BEALE, 140 B Street, S. E., Washington, D. C.

DOROTHY SPINKS, 447 M Street, N. W., Washington, D. C.

MONROE HUNTER, 144 B Street, N. E., Washington, D. C.

CLAIRE WADDEN, Burlington Hotel, 1120 Vermont Avenue,
N. W., Washington, D. C.

ROSE WILLIAMS, 144 B Street, N. E., Washington, D. C.
Defendants.

Complaint for Injunction

1. This is a civil action of which this Court has jurisdiction under Sections 11-301 and 11-306, D. C. Code, 1940.

3 2. The plaintiff is a resident of the District of Columbia and is a member of the National Woman's Party, a corporation organized under the laws of the District of Columbia. She brings this suit in her own behalf, and on behalf of all other members of said corporation similarly situated.

3. The defendants, Anita Pollitzer, Alice Paul, Clara Snell Wolfe, Margaret C. Williams, Marie Moore Forrest,

Gladys Houston Greiner, Elizabeth Forbes, Mabel E. Griswold, Lucia Hanna Hadley, Miriam Y. Holden, Florence E. Kennard, Emma Guffey Miller, Mary Murray, Mary E. Owens, Amelia Himes Walker, Dr. Agnes E. Wells, Meta Grace Keebler and Phoebe Munnecke, are, on information and belief, residents of the places given as their addresses in the caption hereof and claim to be officers and members of the National Council of the National Woman's Party. The defendants Dora Ogle, Samuel L. Mills, Olive Beale, Dorothy Spinks, Monroe Hunter, Claire Wadden and Rose Williams are, on information and belief, residents of Washington, D. C., and are acting as agents of the other defendants in the possession of the premises 144 B Street, N. E., Washington 2, D. C., and its furniture and equipment, to the exclusion of the plaintiff and other members of the National Woman's Party as hereinafter set forth.

4. On January 10, 11, and 12, 1947, the biennial national convention of the National Woman's Party was held at the Mayflower Hotel, Washington, D. C., and the following officers were elected in accordance with the provisions of the Constitution and By-Laws of the plaintiff corporation to hold office for a period of two years or until their successors are elected:

4 Chairman	Mrs. John L. Whitehurst
First Vice Chairman	Mrs. Helen Underwood Loewen
Second Vice Chairman	Miss Jane Grant
Third Vice Chairman	Mrs. Dorothy Shipley Granger
Secretary	Dr. Miriam E. Oatman
Treasurer	Miss Gertrude Crocker

Members of the National Council were also elected, as follows: Dr. Margaret Seabee, Mrs. Orlo Brees, Dr. Katharine A. Norris, Miss Olive Hurlburt, Miss Laura M. Berrien, Mrs. Nora Stanton Barney, Miss Doris Stevens, Mrs. Mary S. Taylor, Miss Gail Laughlin, Mrs. Alma Harrison Ambrose, Mrs. Helena Hill Weed, Mrs. Margaret Wood

Patterson, Mrs. Elsie Graff, Mrs. Mary Doyle McCain, Miss Kathryn Lewis, Miss Mary Elizabeth Downey, Mrs. Gaeta Wold Boyer.

5. On February 5, 1947, suit was filed in the District Court of the United States for the District of Columbia by the National Woman's Party against Anita Pollitzer, et al., Civil Action No. 530-47, for the purpose of determining that the persons named in paragraph 4 hereof were duly elected to office in, and to membership on the National Council of, the National Woman's Party as stated in said paragraph, to direct the defendants in such suit, including many of the defendants to this suit, to surrender to the corporation its Headquarters, seal and records, and to cooperate in making the bank account and funds available to the corporation and to account for funds in their hands as former officers thereof. Said suit is now pending.

5 6. The defendants, other than the defendants Ogle, Mills, Hunter, Wadden, Williams, Beale and Spinks, had been former officers and members or former members of the National Council of the National Woman's Party. They disputed the validity of the elections held at the biennial national convention of the National Woman's Party as set forth in Paragraph 4 hereof, and contended that they were still officers and members of the National Council of said National Woman's Party. As such former officers and members or former members of the National Council they had been and still are in possession of the Headquarters of the National Woman's Party at 144 B Street, N. E., Washington 2, D. C., and the library, records, furniture, and equipment therein. At a meeting held on January 29, 1947, they purported to pass the following resolution:

"Resolved, that all elected and appointed members of the National Council who have identified themselves with the insurgent group be asked to resign and that failure to acquiesce within ten days of receipt of a letter to this effect will be construed as a resignation.

"Be it further resolved that *all* members of the insurgent group be temporarily excluded from Headquarters during pendency of a decision on the question in dispute."

The plaintiff is advised and alleges that this resolution was invalid and of no effect, because the meeting at which it was passed was not a valid meeting of the National Council of the National Woman's Party, and for the further reason that the Constitution and By-Laws of the National Woman's Party give the National Council no authority to pass such a resolution, or to expel members of the National Woman's Party, or to exclude any members of the National Woman's Party from Headquarters.

6 Immediately after passing the above resolution the defendants then present passed the following resolution:

"Resolved, that some arrangement be made whereby Miss Olive B. Lacey who has been engaged to act as our attorney, may be paid \$1,000 for her services, this to be increased if the case lasts beyond a reasonable time."

The said Olive B. Lacey has acted as attorney for said defendants since that time and is now acting as such.

7. Since the passage of said resolution on January 29, 1947, these plaintiffs and all other members of the National Woman's Party, except a small group who are identified with the defendants in this case, have been excluded from the Headquarters of the National Woman's Party. As recently as March 12, 1947, plaintiff went to the door of said Headquarters and applied for admission, but was refused admission by the person who answered the door, whom plaintiff recognized to be the defendant Dorothy Spinks.

8. The right of entry to and use of the Headquarters and facilities of the National Woman's Party is a valuable right possessed by the plaintiff and by other members of the National Woman's Party who are being excluded therefrom by the defendants. The Headquarters is a valuable building worth in excess of \$100,000, contains the valuable and

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unique library and working facilities of the National Woman's Party, and facilities for meetings and formal and informal gatherings of members of the National Woman's Party necessary to the work of the Party. The Headquarters and its facilities aforesaid have in the past
 7 been so used on numerous occasions by all members of the National Woman's Party. At present, and by way of example, many members of the National Woman's Party are anxious to come to Washington to formulate plans and arguments in opposition to H. R. 2007, which they regard as contrary to the position which the National Woman's Party has advocated, and for various other purposes, and they are hampered in the adequate performance of their duties, responsibilities and privileges by the action of the defendants in denying them access to the Headquarters and the facilities thereof. The plaintiff does not raise in this suit the question of whether or not the defendants are now officers or members of the National Council of the National Woman's Party, which question is being litigated in Civil Action No. 530-47. The plaintiff is advised and therefore alleges that, whether or not any of the defendants are officers or members of the National Council of, the National Woman's Party, the defendants have no right to exclude the plaintiff and other members of the National Woman's Party from the headquarters thereof. The plaintiff alleges that she and other members of the party are irreparably injured by such exclusion and have no adequate remedy other than as asked in this proceeding.

WHEREFORE, THE PREMISES CONSIDERED, the plaintiff prays.

1. That process issue against the defendants, and that the Court enter an order of publication against such defendants as cannot be found in the District of Columbia.

2. That the Court enter a preliminary injunction
 8 enjoining the defendants, their agents, servants, employees, attorneys and all persons in active concert or participation with them, from interfering with access by the plaintiff and other members of the National Woman's

Party to the premises 144 B Street, N. E., Washington 2, D. C., and the enjoyment of the same as a Headquarters by the plaintiff and other members of the said Party during the pendency of these proceedings, and that pending hearing on the application for such preliminary injunction the Court enter a temporary restraining order to the same effect without notice.

3. That upon final hearing the defendants, their agents, servants, employees, attorneys and all persons in active concert or participation with them, be permanently enjoined and restrained from interfering with access by the plaintiff to said Headquarters and to use of the same by the plaintiff and other members of the National Woman's Party.

4. And for such other relief as to the Court may be meet.

Spencer Gordon
SPENCER GORDON
Charles A. Horsky
CHARLES A. HORSKY ..
Attorneys for Plaintiff

SPENCER GORDON
CHARLES A. HORSKY
COVINGTON, BURLING, RUBLEE,
ACHESON & SHORB
Union Trust Building
Washington, D. C.
Attorneys for Plaintiff

DISTRICT OF COLUMBIA) ss:

Laura M. Berrien, being sworn, says that she is the plaintiff in the above-entitled cause; that she has read the foregoing Complaint; that the unqualified statements made therein are true, and that the statements made therein as upon information and belief she believes to be true, and that

she verily believes all of the facts stated in the Complaint to be true.

LAURA M. BERRIEN

Subscribed and sworn to before me this 13th day of March, 1947.

Ann McCann

ANN MCCANN

(Seal)

Notary Public, District of Columbia

* * * * *

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Filed Mar 14 1947

Motion for Preliminary Injunction.

The plaintiff Laura M. Berrien moves the Court for a preliminary injunction in the above-entitled cause enjoining the defendants, their agents, servants, employees, attorneys and all persons in active concert or participation with them, pending the final hearing and determination of this cause, from interfering with access by the plaintiff and other members of the National Woman's Party to the premises 144 B Street, N. E., Washington 2, D. C., and from interfering with the enjoyment of the same as Headquarters by the plaintiff and other members of said Party. The grounds in support of this motion are as follows:

1. Unless restrained, the defendants will prevent access to the Headquarters of the National Woman's Party by the plaintiff and other members of said Party, to their immediate and irreparable injury, as set forth more fully in the verified complaint.

10 2. If the defendants continue to interfere with access by the plaintiff and the other members of the National Woman's Party to said Headquarters, any judgment which the Court may later render on final determination of this cause will have been ineffective during the period that these proceedings are before the Court, which period may be a year or more under the present state of the Court calendar, to the irreparable injury of the plaintiff and of the members of the National Woman's Party.

3. If this preliminary injunction be granted, defendants will suffer no damage, even if final judgment were to be in their favor. On the other hand, plaintiff will suffer continuing serious, and irreparable injury by continued exclusion from Headquarters. Any damages which defendants might assert may be adequately indemnified by bond.

Spencer Gordon
 SPENCER GORDON
 Charles A. Horsky
 CHARLES A. HORSKY
Attorneys for Plaintiff

* * * * *
 11

Filed Mar 31 1947

Answer of Defendants Dorothy Spinks and Claire Wadden.

FIRST DEFENSE.

Defendants for answer to the Bill of Complaint filed herein allege:—

(a) That the Bill of Complaint fails state a claim upon which relief can be granted.

(b) That the Court does not have jurisdiction of the subject-matter and the parties.

(c) That Laura N. Berrien is not a proper party plaintiff, and not entitled to the relief requested.

(d) That plaintiff has a plain adequate and complete remedy within the corporation, and has made no attempt to assert the pretended claim within the tribunals of the corporation.

(e) That the control of the property of the corporation is lodged in its National Council and plaintiff should seek any relief she desires before this body.

(f) That the said National Council for reasons best known to itself saw fit to exclude plaintiff from the premises because of conduct of which it did not approve, and such action is not subject to review in any other tribunal or court.

(g) That plaintiff does not come into Court with clean hands.

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SECOND DEFENSE.

Defendants for their further answer to the Bill of Complaint, not waiving the allegations and statements contained in the first defense hereof, deny all of the allegations contained in said complaint not hereinafter specifically admitted.

THIRD DEFENSE.

Defendants for further answer to the Bill of Complaint state:—

1. Defendants deny the allegations of paragraph one, and deny that the amount involved is sufficient to confer jurisdiction on this Court.

2. Defendants admit the allegations of paragraph two, except they deny that there are others similarly situated in whose behalf the plaintiff may act.

3. Defendants deny the allegations of paragraph three, except as to the residences of the defendants, but allege that defendant Dorothy Spinks is a resident of Arlington, Virginia. They allege that the defendants, Anita Pollitzer, Alice Paul, Clara Snell Wolfe, Margaret E. Williams, Marie Moore Forrest, Gladys Houston Grainer, Elizabeth Forbes, Mabel E. Griswold, Lucia Hanna Hadley, Miriam F. Holden, Florence E. Kennard, Emma Guffey Miller, May Murray, Mary E. Owens, Amelia Himes Walker, Dr. Agnes E. Wells, Meta Grace Keebler, and Phoebe Munnecke are officers and members of the National Council of the National Woman's Party and acting in the lawful discharge of their duties with respect to the property, real and personal, of the National Woman's Party and otherwise. That defendants, Dora Ogle, Samuel L. Mills, Olive Beale, Dorothy Spinks, Monroe Hunter, Claire Wadden and Rose Williams are employees of the National Woman's Party, and have been and are acting in the lawful discharge of their duties as such.

4. Defendants deny the allegations of paragraph four, and deny that the purported convention of January 10, 11, 12, 1947 was a biennial National Convention of the National Woman's Party, and deny that any election or action of any character taken at such meeting had any legal effect, and deny that the persons named in paragraph four of the complaint were elected by a Biennial National Convention of the National Woman's Party, and allege that said
13 purported convention was illegal and void and all of its acts and proceedings illegal and void and not binding upon the National Woman's Party or any member thereof.

5. Defendants deny the allegations of paragraph five, except that they admit the filing and pendency of Civil Action No. 530-47. They deny that said action was brought by or under authority of the National Woman's Party, and allege that said action was instituted, filed and is being prosecuted by persons without right or authority to represent said National Woman's; that plaintiff in this action is seeking to secure ancillary relief in connection with said Civil Action No. 530-47, to which action she is not a party. That this plaintiff, therefore, indirectly seeks an adjudication of the same issues in this action as are involved in Civil Action No. 530-47 and presumes to act in a representative capacity, so that the prosecution of this action tends to result in a multiplicity of suits over the same subject matter, and said paragraph should be stricken as redondant and immaterial.

6. Answering paragraph six, defendants deny that the defendants therein referred to as former officers and members or former members of the National Council of the National Woman's Party are former officers and members or former members of such council. They allege that said defendants are the duly elected, qualified and acting officers and members of National Council of the National Woman's Party and as such are performing their duties and obligations, and as such are in possession of all of the Corporation's money and property, including real estate, seal, records,

books, and all emoluments of every kind and character and that they are without authority to deliver said property to any other person or group of persons, and likewise allege that no other person or group of persons has any authority to demand or take over possession or control of its property, seal, records, etc. That as to the National Woman's Party, it is now in possession of all of its property, real and personal, including seal, records, etc., and that said property is being administered by its said duly qualified and elected officers. Defendants admit that they dispute the

14 validity of the purported election held at the purported Biennial National Convention on Jan. 10, 11 and 12, 1947, and they allege that all acts of said purported Biennial National Convention were and are void and of no effect, and in no way binding on the National Woman's Party or its members. Defendants admit the allegations as to the meeting of the National Council of the National Woman's Party held Jan. 29, 1947, and allege that said meeting was a valid meeting of the said Council, that the passage of the resolution referred to was in the best interest of the corporation and to promote its welfare. Defendants further allege that the action so taken was within the power and discretion of the said National Council, and in accordance with the Constitution and By-laws of the National Woman's Party, and not subject to review in any other tribunal.

7. Defendants deny the allegations of paragraph seven, except that plaintiff for good and sufficient reasons best known to the National Woman's Party was excluded from headquarters; they allege that said action was within their discretion and not subject to review by any other tribunal.

8. Defendants deny the allegations of paragraph eight, and deny that plaintiff has any right of entry as alleged, or that she has suffered any injury of any kind or character. Defendants admit the value of the headquarters building, its library and facilities, and allege that they are under the supervision and control of the National Council of the Na-

tional Woman's Party, are being properly cared for, administered and controlled in the best interest of the National Woman's Party, and that the work of the Party is being properly protected and carried on, that all programs in which said National Woman's Party is interested are being protected and promoted by the officers of said corporation. If there is any detriment suffered in this regard, it is because of activities of plaintiff and others acting in conjunction with her, and without authority of the duly elected, qualified and acting officers of the said National Woman's Party and against the interest of said party and its membership. Plaintiff for the purpose of this

suit admits that the officers in charge of the property and affairs of the National Woman's Party are the regularly elected, qualified and acting officers of said Corporation, but plaintiff is seeking herein to control their discretion which is not subject to review by any tribunal, or subject to dictation of any member or group of members.

Wherefore defendants pray that the Bill of Complaint herein be dismissed with costs, and that the defendants have all other equitable and proper relief.

J. H. Connaughton

JOHN H. CONNAUGHTON

Attorney for Defendants,

Dorothy Spinks and
Claire Wadden.

316 Metropolitan Bank
Building,
Telephone Na. 2958.

Jury trial demanded.

J H Connaughton,

JOHN H. CONNAUGHTON,

Attorney for said Defendants.

DISTRICT OF COLUMBIA, ss.

Claire Wadden, being duly sworn according to law, deposes and says that she is one of the defendants who joined in the above entitled answer; that she has read the foregoing Answer and knows the contents thereof, and verily believes the facts therein stated to be true.

CLAIRE V. WADDEN

Subscribed and sworn to before me this 28th day of March, 1947.

W. W. MATHIESON,
Notary Public, D. C.

* * * * *

16 Filed Mar 31 1947

Answer of Defendants Meta Grace Keebler, Samuel L. Mills, Olive Beale and Lucia Hanna Hadley to Complaint.

* * * * *

21 Filed Mar 31 1947

Answer of Defendant Marie Moore Forrest to Complaint.

* * * * *

105 Filed May 13, 1947

Order Denying a Preliminary Injunction and a Temporary Restraining Order and Dismissing Complaint for Injunction.

This cause came on to be heard on plaintiff's motion for a preliminary injunction and upon the prayer for a temporary restraining order contained in the complaint, and, upon consideration thereof and the verified complaint and answers thereto filed herein and testimony in open court, the Court makes the following findings of fact and conclusions of law:

Findings of Fact.

1. Plaintiff is a member of the National Woman's Party, a private, non-stock, non-profit corporation, organized un-

der the laws of the District of Columbia for the purpose of securing equality for women, whose officers and members serve without remuneration, and membership in which carries no financial benefit. Some of the defendants are members of the National Woman's Party and other defendants are employees thereof.

2. A headquarters is owned by the National Woman's Party and consists of a valuable building worth in excess of \$100,000, containing a valuable and unique library, working facilities for its members, and facilities for meetings and formal and informal gatherings of members necessary to the work of the National Woman's Party. Said headquarters and its facilities have in the past been used and open to use by all members.

3. The By-Laws of the National Woman's Party provide that the National Council shall have general management of the affairs of the corporation. They further provide that the Executive Council shall have the administration and management of the affairs and funds of the corporation during the periods when the National Council is not in session. The National Council meets annually or upon call as provided in the By-Laws. Fox's "Parliamentary Usages" are the Parliamentary Authority for the organization, subject to such rules as may be adopted by the organization in convention assembled or by the National Council.

4. At a meeting held on January 29, 1947, certain of the defendants, purporting to act as the National Council of the National Woman's Party, passed the following resolution:

"RESOLVED, that all elected and appointed members of the National Council who have identified themselves with the insurgent group be asked to resign and that failure to acquiesce within ten days of receipt of a letter to this effect will be construed as a resignation.

“Be it further resolved that *all* members of the insurgent group be temporarily excluded from Headquarters during pendency of a decision on the question in dispute.”

Plaintiff is a member of the National Council. The plaintiff received no notice that the resolution was proposed or that the meeting was to be held. Since the passage of the resolution the defendants have deprived, and are now depriving, plaintiff and certain other members of the National Woman's Party of access to said headquarters and the enjoyment and use of the same.

5. The defendants Marie Moore Forrest, Lucia Hanna Hadley, Meta Grace Keebler, Samuel L. Mills, Olive Beale, Dorothy Spinks and Claire Wadden had been served with a copy of the complaint and a motion for preliminary injunction and have had due notice of the hearing thereon. The defendants Anita Pollitzer, Alice Paul, Clara Snell Wolfe, Margaret C. Williams, Gladys Houston Greiner, Elizabeth Forbes, Mabel E. Griswold, Miriam Y. Holden, Florence E. Kennard, Emma Guffey Miller, Mary Murray, Mary E. Owens, Amelia Himes Walker, Dr. Agnes E. Wells, Phoebe Munnecke, Dora Ogle, Monroe Hunter and Rose Williams have not been served owing to the fact that some of them are out of the District of Columbia, and the marshal has been unable to serve those who are in the District of Columbia.

Conclusions of Law.

1. The plaintiff and certain other members of the National Woman's Party who are being excluded from the headquarters failed to allege or prove any property right to be protected by a Court of Equity; that as members they have no property right or interest in the property of the corporation.

2. This Court is without jurisdiction to grant a preliminary injunction or temporary restraining order as prayed for by the plaintiff for the reason that the Court can interfere only to protect property rights.

3. The complaint for injunction should be dismissed on the ground that it fails to state a cause of action upon which relief can be granted.

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Order.

IT IS ORDERED that the motion for preliminary injunction and for a temporary restraining order be, and it is hereby, denied, and it is

FURTHER ORDERED that the complaint for injunction be and it is hereby, dismissed.

(s) EDWARD M. CURRAN
Justice

* * * * *

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Filed May 13 1947

Notice of Appeal.

Notice is hereby given this 13th day of May, 1947, that Laura M. Berrien hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 13th day of May, 1947, in favor of the defendants Anita Pollitzer, Alice Paul, Clara Snell Wolfe, Margaret C. Williams, Marie Moore Forrest, Gladys Houston Greiner, Elizabeth Forbes, Mabel E. Griswold, Lucia Hanna Hadley, Miriam Y. Holden, Florence E. Kennard, Emma Guffey Miller, Mary Murray, Mary E. Owens, Amelia Himes Walker, Dr. Agnes E. Wells, Meta Grace Keebler, Phoebe Munnecke, Dora Ogle, Samuel L. Mills, Olive Beale, Dorothy Spinks, Monroe Hunter, Claire Wadden and Rose Williams, against the plaintiff Laura M. Berrien.

(s) CHARLES A. HORSKY

(s) SPENCER GORDON

Attorneys for Plaintiff

Laura M. Berrien

Union Trust Building
Washington, D. C.

The Clerk will please mail copies to:

Mr. Albert E. Conradis
Attorney for Defendant Forrest
712 Jackson Place, N. W., Wash., D. C.

Mr. John H. Connaughton
Attorney for Defendants Spinks and Wadden
316 Metropolitan Bank Bldg., Wash., D. C.

Miss Olive B. Lacy
Attorney for all other defendants
Colorado Building, Wash., D. C.

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Filed May 14 1947

* * * * *

Statement of Points on Appeal.

Plaintiff states the following as points on appeal:

1. The Court erred in entering all and each of its conclusions of law Nos. 1, 2 and 3.
2. The Court erred in denying the plaintiff's motion for a preliminary injunction, and in not granting said motion.
3. The Court erred in denying the plaintiff's prayer for a temporary restraining order, and in not entering said order.
4. The Court erred in dismissing the complaint.

(s) Charles A. Horsky
CHARLES A. HORSKY

(s) Spencer Gordon
SPENCER GORDON
Union Trust Building
Washington, D. C.,
Attorneys for Plaintiff

* * * * *

101

Memorandum.

May 14 1947

Cost bond on appeal of Laura M. Berrien, in amount of \$250.00 with Fidelity & Casualty Co. of N. Y., approved and filed.

II.

EXCERPTS FROM TESTIMONY AND PROCEEDINGS.

48 **Laura M. Berrien**, the plaintiff, having been called as a witness in her own behalf and having been first duly sworn according to law, was examined and testified as follows:

Mr. Gordon: I will first offer in evidence a certified copy of the certificate of incorporation of the National Woman's Party, and ask that that be marked plaintiff's exhibit 1. That shows the incorporation as a corporation on September 19, 1918. It is not particularly significant except to show that it is a membership corporation under the laws of the District of Columbia.

The Court: Very well.

(The document referred to was received in evidence as plaintiff's Exhibit 1.)

Mr. Gordon: I next offer in evidence, and ask that it be marked plaintiff's Exhibit 2, the constitution and by-laws of the National Women's Party. These are the constitution and by-laws of the organization of which plaintiff's Exhibit 1 is the certificate of incorporation. They have no particular significance except in a negative way. They indicate that what has been done, this pretended resolution that was passed, there is no authority in the by-laws for doing any such thing as that, or in the constitution.

49 The Court: Very well, they may be received.

(The document referred to was received in evidence and marked plaintiff's Exhibit 2.)

Mr. Gordon: I next offer in evidence—and this may be received subject to Miss Lacy checking it—the minutes of the meeting of what the other side consider is the National Council, at which the resolution was passed which has been the basis of this suit.

I particularly call your Honor's attention to the minutes of January 29, 1947, at which a resolution was passed:

"RESOLVED that all elected and appointed members of the National Council who have identified themselves with the insurgent group be asked to resign and that failure to acquiesce within ten days of the receipt of a letter to this effect, will be construed as a resignation.

BE IT FURTHER RESOLVED that all (and that is underscored) members of the insurgent group be temporarily excluded from Headquarters during pendency of a decision on the question in dispute."

There is a further resolution appointing Miss Lacy to represent—and she is called "our attorney" which I assumes means the attorney for the people who are holding the meeting.

I ask that that be marked Plaintiff's Exhibit 3.

The Court: It may be received.

(The document referred to was received in evidence and marked plaintiff's Exhibit 3.)

50 Mr. Gordon: Now I offer in evidence copy of a letter that I wrote to Miss Lacy on March 25, 1947, calling her attention to the fact that some of the defendants had not been served and giving her notice that I was going to ask for a temporary restraining order against such of the defendants as had not been served and that we were going to ask for a preliminary injunction against such of the defendants as have been served, and I ask that that be marked Plaintiff's Exhibit 4.

The Court: Very well.

(The document referred to was received in evidence and marked Plaintiff's Exhibit 4.)

Direct Examination

By Mr. Gordon:

Q. Now, Miss Berrien, let me ask you a few questions:

Will you please state your full name? A. Laura M. Berrien.

in it? A. Well, there were in attendance personally over 200 at the Mayflower.

Q. 200 at the Mayflower? A. I won't say over, around 200; there were letters, telegrams and communications from people in other parts of the country; there were such persons as—

Q. May I interrupt you just a moment? To the best of your knowledge approximately how many members of the entire organization are in sympathy with your group? A. Well, I used the membership cards and made a count of them, and I estimated—I worked it up by proportion, that there were 17 states represented at this convention, and there were from the 17 states which had representatives at this convention, the members of these 17 states constituted 66 per cent of the membership of the whole Party, and then, as I said—

55 Q. How many are there in the whole Party? A.

Well, the cards which we had and used showed four thousand two hundred—I forget exactly, I have it there in my folder—but something over four thousand, with 804 of them paid up.

Q. You say there were 200 people at the Mayflower Convention? A. Yes.

Q. How did that compare with other conventions they held in the past? A. Well, I am, in my position as a member of the Credential Committee for previous conventions, the 1944 convention, which showed—I have not the number in attendance there, but I have 48 voters who were there, and in the Mayflower Convention we had 60 voters, 60 persons entitled to cast a vote, that is, as you will see, a 25 per cent increase.

Mr. Gordon: If your Honor please, I am not trying to show any exact number, I am just trying to show that there are a large number of persons who would come under this resolution and who are in the same class as Miss Berrien.

By Mr. Gordon:

Q. Now, Miss Berrien, in order to save time, let me just ask you this on the record, let me ask you if it was agreed that at that Mayflower meeting the so-called insurgents contend, let us say, that they elected as Chairman Mrs. John L. Whitehurst, is that right? A. That is right.

Q. First Vice Chairman, Mrs. Helen Underwood Loewen? A. Yes.

Q. Second Vice Chairman, Miss Jane Grant? A. Yes.

Q. Third Vice Chairman, Mrs. Dorothy Shipley Granger? A. That is right.

Q. Secretary, Dr. Miriam E. Oatman? A. That is right.

Q. Treasurer, Miss Gertrude Crocker? A. That is right.

Q. And members of the National Council, Dr. Margaret Sebree? A. Yes.

Q. Mrs. Orlo Brees? A. Yes.

Q. Dr. Katharine A. Norris? A. Yes.

Q. Miss Olive Hurlburt? A. Yes.

Q. Miss Laura M. Berrien, that is yourself? A. Yes.

Q. Mrs. Nora Stanton Barney? A. Yes.

57 Q. Miss Doris Stevens? A. Yes.

Q. Mrs. Mary S. Taylor? A. Yes.

Q. Miss Gail Laughlin? A. Yes.

Q. Mrs. Alma Harrison Ambrose? A. Yes.

Q. Mrs. Helena Hill Weed? A. Yes.

Q. Mrs. Margaret Wood Patterson? A. Yes.

Q. Mrs. Elsie Graff? A. Yes.

Q. Mrs. Mary Doyle McCain? A. Yes.

Q. Miss Kathryn Lewis? A. Yes.

Q. Miss Mary Elizabeth Downey? A. Yes.

Q. And Mrs. Gaeta Wold Boyer? A. Yes.

58 Q. All those ladies then would be included among the so-called "insurgents" and so subject to this resolution, is that right? A. Yes, and others.

Q. Yes, and others? A. Yes.

Q. Now, are any of those ladies here in court? A. I think all of them who are resident in Washington are here, except Mrs. Weil, who is ill.

Q. I see. A. And there are other people who are not resident in Washington who are here.

Q. Is Dr. Sebree here—will you stand up, please? A. Yes.

Q. Mrs. Brees? A. She is not here.

Q. Dr. Norris? A. She left—no, she is standing up.

Q. I just want to show the Court that these are not desperate characters or anything of that sort.

Miss Hurlburt, is she here?

Miss Laura Berrien, that is the witness on the stand.

Mrs. Barney?

Miss Doris Stevens, is she here? A. Yes.

59 (Miss Stevens stands up).

Mr. Gordon: You are from New York?

Miss Stevens: Yes.

By MR. GORDON:

Q. Mrs. Mary S. Taylor? A. Yes.

Q. Miss Gail Laughlin? A. No.

Q. Mrs. Alma Harrison Ambrose? A. No.

Q. Mrs. Helena Hill Weed? A. No.

Q. Mrs. Margaret Wood Patterson? A. Yes.

Q. Mrs. Elsie Graff? A. Yes.

Q. Mrs. Mary Doyle McCain? A. Yes.

Q. Miss Kathryn Lewis? A. Yes.

Q. Miss Mary Elizabeth Downey? A. Yes.

Q. Mrs. Gaeta Wold Boyer? A. Yes.

60 Q. Now, are there any other ladies here whose names I have not called, but who have been excluded from the house?

(Several ladies stand up.)

Mr. Gordon: What is your name?

Mrs. Oatman: Miriam E. Oatman, I am the Secretary.

Mr. Gordon: You are the Secretary, and what is your name?

Mrs. Granger: Mrs. Dorothy Shipley Granger.

Mr. Gordon: You are the Third Vice Chairman, are you not, and you have been excluded?

Mrs. Granger: Yes.

By MR. GORDON:

Q. You say Mrs. Armisted is one of your group, and that she is ill? A. Mrs. Weil.

Q. I did not mean Mrs. Armisted, I meant Mrs. Weil, excuse me.

Q. Did you have any notice ahead of time that this resolution was going to be passed? A. I had no notice at all; I had no notice of the meeting at all, and of course, none of the proposed action.

Q. No notice of the proposed action? A. That is, of the meeting at which it was supposed to have been held.

61 Q. Have any charges ever been filed against you by any of the group that is in control there now?

A. Except from things that I have heard said here this morning, none at all.

Q. Now, will you please describe to the Court the facts as to your actual exclusion from the building, just particularly what happened. Did you ever try to get in and were not let in? A. I did. I went up and knocked at the door, a little opening at the side of the door was opened a little ways, the door was not opened at all, and Mrs. Spinks came to the door and said, "What is it?" I said, "I should like to come in." She said, "Just a few moments." So she went back and then she came back and said she was very sorry but the house was closed to visitors. I told her I was not a visitor, but a member of the Council, and she said, well, it was Miss Lacy's order, she should not let me in, she was sorry.

Q. The door was kept shut all the time? A. Never was opened at all.

Q. They peeped out of the window at you? A. Yes.

Q. In your own opinion, what is the value of your right to go into the club house as a member of this organization,

having in mind all the facts as you have testified to?

62 A. It was considerably more than \$3,000.

Mr. Conradis: I object to that.

Mr. Connaughton: That is a conclusion.

Mr. Gordon: Of course, I am asking her opinion.

The Court: Objection sustained.

By MR. GORDON:

Q. Do you know how much the club house cost, Miss Berrien?

Mr. Conradis: I object to that; proof may be submitted as to that.

The Court: Yes.

Mr. Gordon: Well, we offer to prove that the club house cost in excess of \$100,000; that it is very finely furnished and a well set up place.

By MR. GORDON:

Q. Miss Berrien, what is the value of the right of this group which has been excluded to the use of this club house?

Mr. Conradis: I object to that.

The Court: Sustained.

Mr. Gordon: May I ask, if your Honor please, is that sustained on the ground that she is not qualified to give an opinion? It is a right which belongs to her, and I thought that usually people are permitted to testify as to the value of property that they have.

63 The Court: Well, I don't know how she is in a position to give testimony as to the value of membership in such an organization.

Mr. Gordon: It may not be very good testimony, the Court may have other ideas, and there may be other testimony given, but for what it is worth, I submit, if your Honor please, that it would be admissible.

The Court: I will give you an exception.

Mr. Gordon: Yes, sir, all right.

If the Court please, that is our direct case.

Cross examination

By MR. CONRADIS:

Q. You were elected a member of the National Council at the mail vote, vote by mail October 16, 1945, were you not? A. I was voted on, and I voted there.

Q. You were elected a member of the National Council there, were you not? A. If it was a good election, yes.

Q. You served as a member of the National Council, did you not? A. I did.

Q. Did you consider it a good election at that
64 time? A. I did not think it was the best thing
but I did not care to contest it, and have never con-
tested it.

Q. You never protested it? A. Yes, I did at the time.

Q. In writing? A. That is, you mean, contest the election
itself, no.

Mr. Gordon: If the Court please, I object to this line of
testimony; I think it is immaterial and irrelevant, going
into the merits of the election.

The Court: I will sustain that objection.

By Mr. Conradis:

Q. Now, calling your attention to November 14th, did you
have occasion to call Miss Olive Beale and tell her you were
coming to the house?

Mr. Gordon: I object to this, if the Court please.

The Court: I don't know what it is.

Mr. Gordon: It is obvious that they are going into—
well, I will wait until I see what—

The Court: Wait until the next question.

By Mr. Conradis:

Q. Did you call Miss Beale? A. On November 14th, I
would have to know to what you refer before I can verify
that.

Q. About coming to headquarters, do you recall
65 that? A. Ask your question again.

Q. Do you recall the night of November 14th you called headquarters and asked Miss Beale if Mrs. Pollitzer was there? A. I did, and asked to make an appointment for me to see Mrs. Pollitzer.

Q. And you came to the house that night, did you? A. Yes.

Q. What time was that, do you recall? A. A little before the time of the appointment.

Q. What time was that? A. I told her that I would be there at 10:30; I got there some little while before 10:30, not long, say 15 or 20 minutes.

Q. You had no trouble getting in the house then, did you? A. Well, I had no trouble getting in the front door, but everything in the house that I wished to see was locked.

Q. Now, isn't it—

Mr. Gordon: If the Court please, I will now object, because it is apparent that the date, November 17th of last year, is long before this resolution which excluded the people, and it is obvious that what they are trying to go into are these charges that Miss Berrien did certain things
66 that they did not like prior to their attempted expulsion of Miss Berrien. Now if he is really going into that, there are a lot of ladies who will have a lot to say, it is obvious on both sides. It seems to me those things are entirely irrelevant.

The Court: I will hear you.

Mr. Conradis: I think it is absolutely relevant, because it goes to the point that Miss Berrien is not coming to this Court with clean hands, to show that she was there on November 14th, admitted to the house without any trouble. If she had to have the door opened, which she does not even claim, obviously it is way after hours when normally all of us would have our doors closed. What I am leading up to in this, and I feel that Mr. Gordons knows it, is to show that Miss Berrien is not coming into this court with clean hands. I think it is perfectly relevant and material.

The Court: Objection sustained.

Mr. Conradis: And to show good and sufficient reasons for excluding her, Sir.

Are you sustaining the objection to any mention made of this particular occurrence?

The Court: Yes.

By Mr. Conradis:

Q. Now, Miss Berrien, calling your attention to November 14, 1946, isn't it a fact that you and Mrs. Weil
67 went up to Mrs. Ogle's room and demanded that she give the printer an order to print a supplement to "Equal Rights"?

Mr. Gordon: I object.

The Court: I will allow that.

A. I went and asked Mrs. Ogle—we had tried to get a few printed in the rooms of the National Women's Party, the printer had said that we must get an order from Mrs. Ogle or Mrs. Pollitzer, Mrs. Ogle being the Business Manager of "Equal Rights", which is the organ of the Women's Party. I went to Mrs. Ogle and Mrs. Ogle said that she would not give it.

Mr. Conradis: If your Honor will indulge me just one moment.

By Mr. Conradis:

Q. Now, isn't it a fact that you called up the printer in Baltimore about this time and demanded that he print a supplement to "Equal Rights"?

Mr. Gordon: I object—

The Witness: I did not.

By Mr. Conradis:

Q. Now, isn't it a fact that on the morning of November 18th you and Dr. Margaret Sebree and Miss Doris Stevens
68 came to the headquarters and were admitted and went up to the Secretary's office and took the membership files out of the building?

Mr. Gordon: Just a minute, when you get through I will tell her not to answer until I have a chance to object.

Mr. Conradis: That is it.

Mr. Gordon: I object.

The Court: Sustained.

By Mr. Conradis:

Q. Did you at any time remove any files or records from headquarters?

Mr. Gordon: I object.

The Court: Sustained.

Mr. Conradis: Your Honor, I am going to, with your permission, put our own witness on to show that she did.

The Court: Well, you will have the opportunity; I will rule when the proper time comes.

By Mr. Conradis:

Q. Miss Berrien, you testified that you tried to get into headquarters; will you give me the date that you tried to get in and were refused? A. The 12th of March.

Q. March 12th of this year; and what time was it, what time of day? A. Approximately 4 o'clock in the afternoon.

69 Was anybody with you at the time? A. Yes, I had a witness.

Q. Was that Mr. Charles Scott of Mr. Spencer Gordon's firm with you that afternoon?

Mr. Gordon: Robert Scott.

By Mr. Conradis:

Q. Robert Scott? A. Yes, he was.

Q. Just look at me, answer by question? A. Yes, he was.

Q. Now you actually did not expect to be admitted that afternoon, did you? A. Yes, I did.

Q. You went up there expecting to be admitted? A. Assuredly I did; it did not occur to me that they would exclude me; I had that feeling about it.

Q. Why did you take Mr. Scott, a member of a law firm, up there then? A. As a witness.

Q. Then you did not expect to be admitted? A. I said I did, there was a possibility, but I wanted a witness if they did exclude me because—well—

Q. You were perfectly aware that that resolution
70 had been passed and that you would not be admitted to the club house, weren't you? A. Yes, I think I had gotten notice of it at that time; yes, I had, I know I had.

Q. You allege there were over 200 in attendance at the convention meeting at the Mayflower; I believe that meeting lasted two days, did it not? A. Yes.

Q. The 10th and 11th? A. Yes.

Q. Were over 200 in attendance each day, do you recall. Miss Berrien? A. I don't recall; I did not count them.

Q. You did not count them actually, did you? A. They were counted.

Q. Were they all delegates? A. I said in my previous testimony that there were 60 voters, that means delegates.

Q. 60 delegates entitled to vote? A. 60 delegates entitled to vote, against 48 in the previous.

Q. There were 60—A. Against 48 in the '42 convention.

Q. Against 48 in the '42 convention, yes. A. The
71 last previous convention.

Q. I thought the last previous convention was '45? A. No, there has not been any convention since '42.

Q. Do you know how many people voted in the '45 convention by mail? A. I don't.

Q. Now these 60 people entitled to vote, how many, what proportion of the total membership entitled to vote would those 60 represent? A. Well, the 60 people were from 17 states; I counted up the paid-up memberships, which I got from the cards of those 17 states, and it was 66 per cent and a fraction.

Q. Didn't I understand you to testify that there were 804 paid-up memberships out of 4,200 at that time? A. Yes.

Q. That would not be 66 per cent. A. There were 60 delegates representing 66 and a fraction per cent of the membership.

Q. Tell me this, was Michigan represented there? A. Yes.

Q. Was it officially represented by a state delegation?

Mr. Gordon: I object.

Mr. Conradis: Your Honor, it is very material. I just want to find out whether they had a representative
72 delegation. There is quite a question here.

The Court: What is the point.

Mr. Conradis: The point is this: Under direct examination she—under Mr. Gordon's direct examination she was bringing out how many people attended these conventions, obviously to persuade the Court that a majority of the members were represented at the convention. My purpose, obviously, is to show that there were only a small minority represented. I think I have a perfect right to do that because Mr. Gordon brought it out on direct examination.

Mr. Gordon: If the Court please, I made it perfectly clear, at least I intended to and if I did not I will now, that I am not trying in this case in any way to prove the validity of our election as against theirs; I was simply trying to bring out that there were a large number of people there, so that it will be apparent as it must be—you must know this—that there are a great many people being excluded from the club house. That is all I was trying to do.

Mr. Conradis: I would say that it is not so that all of them were excluded from the club house, because as your Honor knows, all members are not being excluded from the club house; it is only the members of the National Council.

Mr. Gordon: The very resolution underscores the word
"all".

73 "Be it further resolved that *all* members of the insurgent group be temporarily excluded from Headquarters during pendency of a decision on the question in

dispute." Maybe Burke did say that you cannot indict a nation, but they have indicted all members of the group.

The Court: I will sustain the objection.

By Mr. Conradis:

Q. Is it not a fact, Miss Berrien, that 23 states were not represented?

Mr. Gordon: I object.

The Court: Sustained.

By Mr. Conradis:

Q. Now is it not a fact that 31 states were not represented?

Mr. Gordon: I object.

The Court: Sustained.

By Mr. Conradis:

Q. Calling your attention to January 11th, Miss Berrien, is it not a fact that you and a group went up to Headquarters seeking admission to Headquarters—

Mr. Conradis: Please look at me, Miss Berrien, it is not necessary to look at Mr. Gordon.

Mr. Gordon: I object, if the Court please, Miss Berrien has a perfect right to look at me; I enjoy having her
74 look at me, and I don't want to have the privilege taken away from her.

Mr. Conradis: I do not want to be deprived to the privilege of having Miss Berrien look at me while I am cross-examining her, Mr. Gordon.

The Court: Let us proceed, gentlemen. I will sustain the objection.

Do you have any evidence, Mr. Conradis that the witness is getting her answers from counsel?

Mr. Conradis: Not beyond the fact that she looked at Mr. Gordon.

The Court: That certainly is not objectionable.

By Mr. Conradis:

Q. Is it not a fact that you went to headquarters on January 11th?

Mr. Gordon: I object.

The Court: Overruled.

Mr. Gordon: May I state the reason. I think this goes into the line of testimony that I spoke of.

The Court: Well, she has not stated yet whether she went there or not. The next question may.

By Mr. Conradis:

Q. Isn't it a fact that you went to headquarters on
75 January 11th? A. I did.

Q. What time in the evening was that?

Mr. Gordon: I object.

The Court: Overruled. What time?

The Witness: I did not look at my watch, but I have been told by others with whom I went it was after 11.

By Mr. Conradis:

Q. What was your purpose in going up there?

Mr. Gordon: I object.

The Court: Sustained.

By Mr. Conradis:

Q. Now what happened at headquarters when you went up there?

Mr. Gordon: I object.

The Court: Sustained.

By Mr. Conradis:

Q. Were you excluded from headquarters on November 11th by anyone?

Mr. Gordon: I object; that is before this resolution we are complaining of.

The Court: I will let her answer.

Mr. Gordon: Exception, if your Honor please.

The Witness: I was, by a man at the top door who said he was a detective.

76 Q. You got into headquarters though, did you not, Miss Berrien, that night?

Mr. Gordon: I object.

The Court: I will allow it.

The Witness: I did.

By Mr. Conradis:

Q. How did you get in? A. One of the women who rooms there came down into the basement; I went up to the top door where the detective was and he refused to let me in. I am very familiar with the house, so I went downstairs and it was barred and locked, but the lady who lived there and who knew all of us, came to the door and saw what it was, she was friendly with some of the group and knew who we were, and she opened the door and let us in.

Q. What did you do then?

Mr. Gordon: I object.

The Court: Sustained.

By Mr. Conradis:

Q. You entered the lower door? A. Yes.

Q. Where did you go from there?

Mr. Gordon: I object.

The Court: Sustained.

77 By Mr. Conradis:

Q. Is it not a fact that you were in the parlor for quite a considerable time that night, Miss Berrien?

Mr. Gordon: I object.

The Court: Sustained.

By Mr. Conradis:

Q. Miss Berrien, was there some trouble at headquarters that night when you were there?

Mr. Gordon: I did not hear that.

Mr. Conradis: Wasn't it a fact that there was some trouble at headquarters that night she was there.

Mr. Gordon: I object.

The Court: Sustained.

By Mr. Conradis:

Q. Did you assault anybody at headquarters that night?

(A chorus of laughter)

The Court: I will have to tell the spectators any further outbursts like that and I will close the court room. This is no laughing matter, nothing funny. There is a serious issue being raised. I caution you that you must not do it. I know you did not mean anything by it, but please don't do it.

Now, I will sustain the objection.

Mr. Conradis: That is all.

78 Mr. Gordon: I just want to straighten out one thing. I think there is a little confusion about the '42 and '45 conventions, just to get the record clear.

The Court: In '42 they had the last regular convention and in '45 they voted by mail.

Redirect Examination

By Mr. Gordon:

Q. That is right, isn't it, Miss Berrien? A. That is right.

Mr. Gordon: That is all, step down.

(Witness excused)

Mr. Conradis: Are you finished, Mr. Gordon?

Mr. Gordon: That is our case, yes. We may have something more if you have something in rebuttal.

Mr. Conradis: Your Honor, at least I would like to have the privilege of putting on some witnesses of our own.

The Court: What is the purpose of your testimony?

Mr. Conradis: To show the three things that I mentioned to you in my opening statement, that the plaintiff in this case did do certain things, by offering proof—

The Court: You know the issue is very clear to the Court. You know the reason Miss Berrien is being excluded from the club house is because of the fact that
 79 she is a member of the so-called "insurgent" group. Now isn't that right?

Mr. Conradis: Not altogether, your Honor, I would just like to point out that it is not altogether that. We claim, your Honor, that she does not come into this Court with clean hands. We have a doctrine here in the District of Columbia that if a person comes into this court beseeching the court—

The Court: You mean to say that if she went up there and hit somebody that she would not be coming into court with clean hands.

Mr. Conradis: In connection with this particular matter in dispute.

The Court: That is number 1; what is number 2?

Mr. Conradis: That is the particular point, clean hands, that I am concentrating on.

The Court: I thought there were two principal points of testimony you wanted to introduce.

Mr. Conradis: The third I mentioned was that on November 14th she and Mrs. Weil went up to headquarters—this will be direct proof, we can prove this directly. Do you want me to state just what we are going to prove?

The Court: I want to know what it is before I admit it.

Mr. Conradis: Well, that they went up to headquarters at about 10:30 or 11 o'clock at night, saw
 80 Miss Beale in her room, were admitted by Miss Beale, saw Miss Beale in her room, and it was at that time that she demanded to see the General Business Manager of "Equal Rights" which is the magazine of the National Women's Party, found out that she was there and told her to authorize a supplement to the issue of September or October, which had already been put out, which she had no right to do.

The Court: What is wrong with that?

Mr. Conradis: Nothing in particular. Well, they were in, they had no right to print a supplement to the issue, that issue was already out. That is one thing, but apart from that, we have proof, as against what Miss Berrien said on the stand, that everything was locked up; we have proof to show that Mrs. Weil broke into the main door to the dining room where the records were kept that night. Now that is one point.

The second is that on November 18th in the morning that she and Miss Stevens and Dr. Seabee came to headquarters and brought up a box containing the membership records of the organization and took and removed them, took them

away in their car and kept them until December 13, 81 when under written demand by the officers of the

National Council of the organization, Miss Berrien did bring them back and signed a receipt for everything they took.

The third point is this matter of headquarters that night in January, January 11th, when, after they had finished their convention—that was Saturday night—they had finished the convention at the Mayflower and elected their officers—

The Court: You cannot go into that now.

Mr. Conradis: Sir?

The Court: I am not interested in that subject.

Mr. Conradis: No, I was just giving you the background. Then a group of them, including Miss Berrien, came up to headquarters, almost 12 o'clock, practically Sunday, and demanded admission to headquarters. They were refused admission, but as Miss Berrien testified, one of the ladies in the house friendly to them, let them in the door downstairs. They went upstairs, some tried to get in the front door, and Miss Oatman—

(At this point Miss Oatman interrupted him.)

Mr. Gordon: I am awfully sorry.

Mr. Conradis: Nice, quiet ladies.

The Court: Let that lady come up here.

(Miss Oatman comes forward.)

82 The Court: I just warned you that I did not expect any further demonstrations of this character. What do you mean by it?

Miss Oatman: I am awfully sorry, I apologize. This is the second time that he has made reference to me. I was the one that was assaulted. I just forgot myself, I am sorry.

The Court: You must remember that you cannot speak out in court.

Miss Oatman: No, I should be more careful, I apologize.

The Court: Now I am not going to admit that testimony because it is not relevant to this issue. I have the picture well in mind as to what the issue is, and I am concerned about that first point. As you gentlemen well know, it has been well established by the courts that they will not undertake to meddle in the affairs of voluntary associations or attempt to regulate the internal affairs of those associations.

The courts have said, in some of these cases where property rights are involved, and insofar as is necessary to protect those rights, they will interfere.

The defense takes the position that the plaintiff has no property right. Let us assume that, and this court ought not to interfere—I don't want to interfere unless it becomes necessary to protect the property rights directly involved.

83 Counsel for the plaintiff says that a contractual relationship existed between the plaintiff and the National Women's Party by reason of her membership in the National Women's Party, and her contributions to the Party, both from the viewpoint of the money she has put in and the services rendered, so as to constitute a property right.

Now I would like you gentlemen to submit me your authorities not later than tomorrow because I want to decide this thing immediately. I have the full picture in my mind, exactly what the situation is. I am interested in that one question, where it depends on the question of whether or

not, under the facts as we have them here, the plaintiff has a property right, because as I say the courts will not interfere to regulate the internal affairs of voluntary associations unless it is affecting the property rights, and then they will interfere to protect the property rights. Now you people know your interests and I have stated, correctly, have I not, the contentions of both sides?

Mr. Gordon: Yes, sir, I think so. You want to have some authority for the proposition that the right of Miss Berrien and the other members of the class who are excluded from going into that building, is a property right which the court should protect?

The Court: That is right.

Miss Lacy: I may also submit a memorandum?

84 The Court: Yes, indeed. I would like to have it not later than tomorrow, because I want to dispose of it.

Mr. Gordon: Do you want to have any further discussion of it? I will get you my memorandum tomorrow.

The Court: Does that give you time enough?

Mr. Conradis: I could use a little more time.

Mr. Connaughton: Say two days, would that be out of the way?

Mr. Gordon: That would be fine.

The Court: I want to give both sides time enough. I don't want to push you too much. Suppose I make it Wednesday, counsel to hand in their memorandum Wednesday afternoon at 3 o'clock in my chambers. Is that agreeable?

Mr. Gordon: Wednesday afternoon at 3 o'clock, on that one point.

Mr. Conradis: Also on the question of property rights.

The Court: Very well, gentlemen, that will be all.

* * * * *

Plaintiffs' Exhibit No. 2.**Constitution and By-Laws of the National Woman's Party.**

Adopted at Colorado Springs, 1927—Amended at New York City, 1934 and Further Amended at Detroit, 1938.

(The National Woman's Party was incorporated September 19, 1918, under Chapter XVIII Sub-Chapter III, of the Laws of the District of Columbia.)

ARTICLE I: NAME

The name of this organization shall be The National Woman's Party.

ARTICLE II: OBJECT

The object of this organization shall be to secure for women complete equality with men under the law and in all human relationships.

ARTICLE III: MEMBERS

Section 1. Membership shall be open to all women who support the object of this organization and comply with provisions for membership of State organizations, or of the National Organization.

Section 2. Any group of women wishing to further the objects of this organization may form a branch of the National Woman's Party, by submitting a constitution to the National Council and receiving the approval of that Council. Upon such approval, the branch shall become a part of the organization of the National Woman's Party of the state in which it is organized. There shall be no more than one state organization in each state.

Section 3. Members residing in any locality where no organization of the Woman's Party exists may become members of the National Woman's Party by the payment of dues annually to the National Treasury.

Section 4. Nothing in these by-laws prevents the affiliation of a member to a branch outside her domicile.

ARTICLE IV: OFFICERS

The officers of this organization shall be a Chairman, a First Vice-Chairman, a Second Vice-Chairman, a Third Vice-Chairman, a Secretary and a Treasurer. These officers shall be elected at the Biennial National Convention and shall hold office for a period of two years and/or until their successors are elected.

The election shall be by ballot, except where there is but one nominee for an office, election may be by oral vote.

90 The duties of such officers shall be such as are usually performed by such officers and such other duties as the National Council shall designate.

ARTICLE V: NATIONAL COUNCIL

The control and management of the affairs and funds of the National Woman's Party shall be vested in a National Council, an Executive Council and an Advisory Council, as follows.

Section 1. National Council: The National Council shall consist of the officers, the past Chairmen of the National Woman's Party, the Chairmen of each of the State and territory branches and the District of Columbia, the Chairmen of the Occupational Councils and twenty members at large. The twenty members shall be chosen at the biennial Convention by ballot, except that if only twenty persons are nominated the election may be by oral vote. The National Chairman may appoint from one to five additional members at large. The elected members of the Council shall hold office for two years and/or until their successors are elected, and the appointed members shall hold office until the close of the biennial period in which they have been appointed.

The National Council shall direct the general policies of the organization and shall meet annually immediately following each National Convention and immediately following each National Conference and at the call of the Chairman or on the written request of 10 members of the National Council.

Section 2. Executive Council: The Executive Council shall consist of the Chairman of the National Council, the First Vice-Chairman, the Second Vice-Chairman, the Third Vice-Chairman, the Secretary, the Treasurer, nine members at large and the Chairman of the World Woman's Party ex-officio, providing that person is a member of the National Council of the National Woman's Party. The nine Members at Large shall be elected by the National Council from its membership at the meeting immediately following the National Biennial Convention. Vacancies occurring between meetings of the National Council shall be filled by the Executive Council.

The administration and management of the affairs and funds of the organization shall be vested in the Executive Council in the intervals between meetings of the National Council.

Section 3. Advisory Council: There shall be an Advisory Council to be composed of and to include all National Life Members, National Sustainers, National Endowers, and any person of distinction and achievement named by the Executive Council to membership on such Advisory Council.

ARTICLE VI: STANDING COMMITTEES

Section 1. There shall be the following standing committees: Finance, Congressional, Endowment, Headquarters, Equal Rights Publication, International Relations, Organization and such others as the National Council shall from time to time create.

Section 2. There shall be a permanent Investment and Endowment Fund Committee which shall have charge of the Woman's Party investments. This committee shall consist of the original members chosen by the National Council of the Woman's Party, together with the members since added to this committee. This Investment and Endowment Fund Committee shall fill vacancies on the Committee and may add to its membership as it desires, pro-

vided that each new member is also approved by the National Council. The Investment and Endowment Fund Committee shall have the power to open and carry accounts with banks and trust companies, to rent safety deposit boxes in the name of the Investment and Endowment Fund Committee of the National Woman's Party. It shall have the right to authorize members of the Committee to make deposits and withdrawals from the account of the Committee and authorize members to have access to the safety deposit boxes of the Committee. The Investment and Endowment Fund Committee shall have charge of the National Headquarters Fund, created by Mrs. Belmont, and the legacy left the National Woman's Party by Mrs. Belmont in her will.

It shall have control of the capital funds; shall make written reports to the National Council and to the Convention and after payment of taxes, real and personal, as well as all fixed charges, shall pay over all income to the Treasurer of the National Woman's Party to be expended as the National Council shall direct.

ARTICLE VII: OCCUPATIONAL COUNCILS

There shall be such Occupational Councils as the National Council may designate. The Occupational Councils shall work to remove the discriminations against women in their respective occupations.

ARTICLE VIII: INTERNATIONAL AFFILIATIONS

The National Woman's Party shall be the United States branch of the World Woman's Party.

ARTICLE IX: NATIONAL CONVENTION

A National Convention shall be held biennially, the date and place to be determined by the National Council.

The voting body of the National Convention shall consist of the members of the National Council, Chairmen of State Organizations belonging to this organization, Chairmen of the Standing Committees, Chairmen of the

89a Occupational Councils, Founders, Life Members, Sustainers, Endowers and delegates from State organizations, each State organization to be entitled to one delegate for every twenty-five members, whose names and addresses have been sent to Headquarters.

ARTICLE X: NATIONAL CONFERENCE

A conference of the National Council, of National, State and Local Committee Members, Chairmen of Occupational Councils, Founders, Life Members, Sustainers and Endowers shall be held in non-convention years at a place and date designated by the National Council.

ARTICLE XI: DUES

Section 1. The National Council shall determine the classes of membership in the organization and shall fix the amount of dues.

Section 2. Each state organization shall pay to the Treasurer of the National organization before June 1st of each year the amount of dues fixed by the National Council for each member belonging to the state organization.

ARTICLE XII: STATE ORGANIZATIONS

Each State organization shall determine its own form of organization and the amount of the yearly dues and shall have entire direction of its activities; provided that no action of any State organization shall conflict with National policies.

ARTICLE XIII: COLORS

The official colors of this organization shall be purple, white and gold.

ARTICLE XIV: EMBLEM

The official emblem of this organization shall be a small purple, white and gold banner.

ARTICLE XV: QUORUM

A majority of the members of the voting body present at a National Convention shall constitute a quorum thereof.

Fifteen members of the National Council and five members of the Executive Council shall constitute a quorum of these Councils respectively.

ARTICLE XVI: PARLIAMENTARY AUTHORITY

Fox's "Parliamentary Usages" shall be the Parliamentary authority for this organization subject to such rules as may be adopted by the organization in convention assembled or by the National Council.

ARTICLE XVII: AMENDMENTS

These by-laws may be amended by a majority vote of the members present and voting at any National Convention provided that notice of such an amendment shall have been given to the Secretary of the organization at least one month previous to the calling of the Biennial Convention. Notice of such amendment shall be included in the call to the Convention.

* * * * *

Plaintiff's Exhibit No. 4.

99

Filed May 13, 1947

Notice.

March 25, 1947

Miss Olive B. Lacy
Colorado Building
Washington 5, D. C.

Dear Miss Lacy:

We have received notice from the Assignment Commissioner that the case of Berrien v. Pollitzer, et al., in which you have appeared for some of the parties, has been placed for hearing on March 31, 1947 at 10 A. M.

Some of the defendants have been served. Others have not by reason of the fact that it has been impossible to get to them. On March 31 our application for a preliminary injunction will be heard against those who have been served,

and at that time we shall also ask for a temporary restraining order against all those who have not been served. We are giving you this notice in view of the fact that you are the counsel for the group who are the defendants, and to the extent possible we wish them to have notice of what we expect to do.

Very truly yours,

SPENCER GORDON.

mmr

I certify that I mailed a copy of the foregoing letter to Olive B. Lacy, Colorado Building, Washington 5, D. C., postage prepaid, March 25, 1947.

SPENCER GORDON,

Attorney for Plaintiff.

BRIEF FOR APPELLANT

IN THE
United States Court of Appeals
DISTRICT OF COLUMBIA.

No. 9555

LAURA M. BERRIEN, *Appellant*,
v.
ANITA POLLITZER, et al., *Appellees*.

Appeal from a Judgment of the District Court of the
United States for the District of Columbia.

United States Court of Appeals
for the District of Columbia

FILED AUG 29 1947

Joseph W. Starnes
CLERK

SPENCER GORDON,
CHARLES A. HORSKY,
ELEANOR SESSOMS,
Attorneys for Appellant.

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9555.

LAURA M. BERRIEN, *Appellant*,

v.

ANITA POLLITZER, et al., *Appellees*.

BRIEF FOR APPELLANT.

JURISDICTION.

This is an appeal from a final judgment of the District Court of the United States for the District of Columbia in a suit wherein the appellant, Laura M. Berrien, sought an injunction against the appellees herein. The District Court had jurisdiction under Sections 11-301 and 11-306, D. C. Code (1940). This Court has jurisdiction to review the judgment under Section 17-101, D. C. Code (1940).

STATEMENT OF CASE.

The material facts in this case are largely undisputed. The appellant brought suit on her own behalf and on behalf of many others similarly situated to enjoin the appellees

from preventing her from having access to and use of the Headquarters Building of the National Woman's Party, located at 144 B Street, N.E., Washington 2, D. C. (R. 3-8).

The circumstances of the exclusion of appellant, and those similarly situated on whose behalf she sues, from the Headquarters require a brief statement of the nature of the National Woman's Party and a bit of its recent history.

The National Woman's Party (hereinafter referred to as the "Party") is a private, non-stock, non-profit corporation, organized under the laws of the District of Columbia on September 19, 1918, for the purpose of securing equality for women (Finding 1, R. 15-16). It owns a National Headquarters Building, at 144 B Street, N.E., Washington 2, D. C. (Finding 2, R. 16). It is a very valuable building, worth in excess of \$100,000, and it contains a valuable and unique library relating to the women's movement, working facilities for the members of the Party, and facilities for meetings and formal and informal gatherings of members necessary to the work of the Party. There are many rooms that can be used by members, upstairs bedrooms, and additional rooms in a detached house within the grounds (Finding 2, R. 16; R. 23).

The Constitution and By-Laws of the Party (Pl. Exh. 2, R. 43-48) provide that "the control and management of the affairs and funds of the National Woman's Party shall be vested in a National Council, an Executive Council and an Advisory Council" (Pl. Exh. 2, R. 44; Finding 3, R. 16). The National Council, consisting of the officers, past chairmen, state chairmen, occupational council chairmen and twenty members at large elected at biennial conventions, "shall direct the general policies of the Organization" (*ibid.*). The Executive Council, consisting of the officers and nine members at large elected by the National Council from its membership is charged with "the administration and management of the affairs and funds of the organization * * * between meetings of the National Council" (*ibid.*) Officers and members at large of the National Council are elected at the Biennial National Convention (Pl. Exh. 2, R. 44).

In January of this year a dispute arose within the Party. Although its merits are not here involved and are the subject of another action,* a brief statement of the dispute will explain much as to the present case. On January 10, 11 and 12, 1947 a Biennial National Convention of the Party was held at the Mayflower Hotel, Washington, D. C. (Complaint, R. 4-5; Answers, R. 12-13). Appellees are members of the Party and until the Convention, were members of its governing body, the National Council (25).** They were not, however, re-elected at the Convention.

Nevertheless, the appellees were, and are, by virtue of their prior positions, in possession of the Headquarters Building. Claiming to be still members of the National Council, they have disputed the validity of the January Convention, and termed all who participated in it "insurgents" (Complaint, R. 5; Answer, R. 12-13; Pl. Exh. 3). On January 29, 1947, at a meeting, they passed the following "resolution" (Finding 4, R. 16):

"RESOLVED, that all elected and appointed members of the National Council who have identified themselves with the insurgent group be asked to resign and that failure to acquiesce within ten days of receipt of a letter to this effect will be construed as a resignation.

"Be it further resolved that *all* members of the insurgent group be temporarily excluded from Headquarters during pendency of a decision on the question in dispute."***

* National Woman's Party v. Pollitzer, *et al.*, Civil No. 530-47 (D.C. D.C.).

** Except for seven, who are employees at the Headquarters Building. For sake of brevity, "appellees" in this statement refers to the appellees who were members of the National Council.

*** Immediately after passing the above resolution the appellees then present passed the following resolution:

"RESOLVED, that some arrangement be made whereby Miss Olive B. Lacy who has been engaged to act as our attorney, may be paid \$1,000 for her services, this to be increased if the case lasts beyond a reasonable time." (Pl. Exh. 3; see R. 6, 13.)

It was alleged in the complaint and not denied in the answers that Miss Lacy has acted as attorney for the appellees since that time and is now acting as such. (Complaint, par. 6, R. 6; and Answers, par. 6, *e.g.*, R. 13.)

Appellant received no notice at all of the purported meeting, nor that such action as the above resolution was proposed (Finding 4; R. 17, 27). There is no provision in the Constitution and By-Laws of the National Woman's Party which gives any authority to the National Council to pass such a resolution, or to expel or exclude from Headquarters any members of the National Woman's Party (Pl. Exh. 2, R. 43-48).

It should be added that in this action, appellant does not raise the question whether appellees were still officers of the Party or members of its National Council (Complaint, par. 8, R. 6-7). She believes that, whether they were or not, the "resolution" of January 29, 1947, is invalid.

This "resolution" of January 29, 1947, has been rigorously enforced. Appellant herself was specifically denied admission (Finding 4, R. 17; R. 27-28). Moreover, the January Convention was attended by around 200 members, including 60 voting delegates who represented 17 States and about two-thirds of the entire Party membership of over 4,000 persons (R. 23-24). All are banished by the resolution, and by the action of all of the appellees, including the Headquarters employees named as defendants below, in enforcing it.

Appellant herself, a resident of the District of Columbia, is a member of the Party (Finding 1, R. 15). In fact, she is one of its founders (R. 22). She holds a life membership, for which she paid \$1,000 (R. 22), and which carries with it membership in the Advisory Council of the Party (Pl. Exh. 2, R. 45). She had been Treasurer for 15 years until 1945, when she declined to stand again for election (R. 22). Her monetary contributions to the Party, over the years, including contributions to expenses and trips on various work, have amounted to well over \$3,000 (R. 22). She is a member of the former National Council, and was also re-elected at the January Convention (R. 23, 25).

Until she was forbidden the facilities of the Headquarters, appellant used them frequently—while she was Treas-

urer sometimes night after night. She also used it for working, to attend conventions, to meet people, and to hold meetings and conferences with her colleagues who were working for the Party's aims and purposes (R. 23).

On March 14, 1947, appellant filed this suit, praying for injunctive relief against appellees' interfering with access to and use by her and other members of the Party to the Headquarters Building (R. 2-9). On the same day, she filed a motion for a preliminary injunction (R. 9-10). Seven of the appellees—Forrest, Hadley, Keebler, Mills, Beale, Spinks and Wadden—were served with a copy of the complaint and motion (Finding 5, R. 17). All of them filed answers to the complaint. The remaining appellees have not been served owing to the fact that some of them are out of the District of Columbia and the marshal has been unable to serve those who are in the District of Columbia (Finding 5, R. 17). Against these appellees, appellant sought a temporary restraining order (R. 8, 15). Written notice was given almost three weeks before the hearing to Miss Olive B. Lacy, their attorney, that appellant would ask for a temporary restraining order against such of the defendants as had not been served (Pl. Exh. 4, R. 48-49).

The Court below, after a hearing on appellant's motions for a preliminary injunction and for a temporary restraining order, held that it was without jurisdiction to grant such relief for the reason that it could interfere only to protect property rights, and that appellant and other members of the Party who are being excluded from the Headquarters have, as members, no property right or interest in the property of the corporation which could be protected (Conclusions of Law 1 and 2, R. 17). The court therefore dismissed the complaint for failure to state a cause of action (Conclusion of Law 3; Order, R. 18).

STATEMENT OF POINTS.

1. Appellant contends that she alleged and proved a property right or interest to be protected by a court of equity; that she and other members of the National Woman's Party who are being excluded from the Headquarters Building have a property right or interest in the Headquarters Building. The court below erred in entering a conclusion of law to the contrary.

2. The court below erred in holding that it had no jurisdiction to grant a preliminary injunction and a temporary restraining order on the ground that the court can interfere only to protect property rights.

3. The court erred in denying appellant's motion for a preliminary injunction, and in not granting said motion.

4. The court erred in denying appellant's prayer for a temporary restraining order, and in not entering said order.

5. The court erred in dismissing the complaint on the ground that it fails to state a cause of action upon which relief can be granted.

SUMMARY OF ARGUMENT.

I.

Appellee's conduct in excluding appellant and other members of the National Woman's Party from the Headquarters is illegal and tortious. The "resolution" directing the exclusion of appellant and all other members of the "insurgent group" was void, whether or not appellees were members of the National Council. The Constitution and By-Laws do not grant to the National Council any jurisdiction or power to exclude some of the members of the Party from the Headquarters. Furthermore, no charges were filed against appellant and the other excluded members; they had no notice that any action such as that taken by the "resolution" was proposed; and they were given no

opportunity to be heard. Under such circumstances, the purported action was wholly void and will be declared so by the courts.

II.

Appellant has a property interest which the courts will protect. Many decisions, in this Court as well as in many other courts, have extended that protection. Members of non-stock, non-profit corporations have an equitable property interest in a clubhouse owned by the corporation, and a right to use it in common with other members. It is a valuable right arising from the contract of membership between the member and the corporation.

III.

The deprivation of the use of the Headquarters is seriously hampering appellant and other members in carrying on the work which the National Woman's Party was organized to do. The Party is actively engaged in the sponsorship of the Equal Rights Amendment to the Federal Constitution, which is now being considered in Congress. It is very important that members of the National Woman's Party be enabled to come, not only from the District of Columbia, but from all parts of the United States and use the various facilities of the Headquarters Building for their work. The injury which appellant and other excluded members are suffering is certain and irreparable. Since they seek only the right to use the Headquarters Building in common with all other members, as in the past, no injury could result to appellees if injunctive relief were granted.

ARGUMENT.

I.

Appellees' action in discriminatorily excluding appellant and other members of the National Woman's Party from the headquarters building is illegal and void and should be set aside by the court.

The "resolution" of January 29, 1947, purportedly by the National Council, which directed that all members of the so-called "insurgent group" be excluded from the Headquarters Building is totally void. The Headquarters and its facilities had previously been used, and open to use, by all members of the Party. Appellees have attempted, under color of their "resolution" to close the Headquarters to approximately two-thirds of all members of the Party (R. 24), and to dedicate it to the exclusive use of their own faction.

This result follows whether or not appellees are still officers and members of the National Council. The principles of law in such a case were enunciated by this Court in *De Yturbide v. Metropolitan Club*, 11 App. D. C. 180 (1897). De Yturbide had been expelled from membership in the Metropolitan Club, and filed a petition for mandamus to compel reinstatement. The Court said (11 App. D. C. at p. 195):

"In this case, the statute authorizing the incorporation of the club authorizes the making of by-laws; and, by the by-laws made, the becoming a member requires the party to agree, as a condition, that he will submit to the rules and restrictions prescribed; and by one of the by-laws it is declared that any member conducting himself in a manner unbecoming a gentleman shall be subject to expulsion upon a vote of two-thirds of the members of the board of governors. There is, therefore, no want of authority for the expulsion of a member of the club for the offense designated in the by-law. And as the offense with which the relator was charged was one against his corporate duty as a member of

the club, he could only be tried by the constituted corporate authorities, under the by-law; and if such trial was regularly conducted, and the judgment arrived at was in good faith, there is no power or jurisdiction in the courts to interfere with or reverse or vacate that judgment. *Rex v. Richardson*, *supra* [1 Burr. 517]; *Com. v. St. Patrick Ben. Soc.*, *supra*, [2 Binn. 448]; *Gregg v. Mass. Med. Soc.*, 111 Mass. 185; *Lambert v. Addison*, 46 L. T. 25."

The Court quoted with approval the following from Leach's "Club Cases" (*id.*, at p. 199):

"* * * 'But the penalties on the convicted offender are so serious that it behooves them to act in a manner befitting what they are—a judicial or quasi-judicial body—and, in consequence, they should in such matters act strictly in accordance with the rules of the club, and the ordinary principles of justice; and they should pay particular attention to the constitution of the court, by seeing that due notices are sent to all the persons who ought to be summoned, whether as committeemen, witnesses or accused; and that no one who has any bias or personal interest in the matter in question should sit as a member of the tribunal on the inquiry; the accused person should be given full opportunity of defending himself; and finally, the decision should be arrived at in a *bona fide* manner, on the circumstances in evidence, without malice and without caprice. If any of these considerations can be shown to have been disregarded, then a judicial tribunal will interfere, and the decision of the quasi-judicial tribunal will be set aside.' " (Italics ours.)

The *De Yturbide* case points out three requisites to valid corporate action for the disregard of any one of which the courts will interfere: (1) authority under the by-laws, (2) a regularly conducted trial, and (3) a judgment arrived at in good faith. A great many cases to the same effect are collected in a note at 49 LRA 353 (1913). See also 12 Fletcher, Cyc. Corporation (Perm. Ed. 1932), Sec. 5704.

Not a single one of the requisites to valid action is present in this case. There is complete want of authority in the National Council to expel, suspend or penalize members; there is no authority in the Constitution or By-Laws for such a penalty as exclusion of members from the Headquarters; and no by-law defines as an offense any conduct in which appellant has engaged. Neither the certificate of incorporation (Pl. Exh. 1) nor the Constitution and By-Laws (Pl. Exh. 2) has any express provision concerning expulsion or disciplinary action against members. The power to discipline members, not having been delegated, is therefore in the entire membership of the corporation. See 12 Fletcher, Cyc. Corporations (Perm. Ed. 1932), Sec. 5702, where it is said:

“The power to expel a member is primarily in the whole body of members as constituting or representing the corporation, and cannot be exercised by the directors or trustees, or other officers, unless there is some provision to the contrary in the charter of the corporation, or unless the whole body of members have, by a duly adopted and valid by-law or resolution, authorized in the particular jurisdiction, delegated the exercise of the power to the board of directors or some other select body * * *”

A second and independent ground on which the action of appellees was void is the lack of a fair hearing or trial. No charges were filed against appellant or any other members (R. 27). They had no notice that any action against them was proposed, nor were they given any opportunity for a hearing (*ibid.*). Appellant, in fact, was a member of the National Council before as well as after the January Convention, since she had been re-elected, and even she was given no notice even of the meeting at which the “resolution” was passed (*ibid.*), and of course no notice that any such action was contemplated. Such action violated all rules of democratic procedure and was a nullity. *De Ytur-bide v. Metropolitan Club, supra*; 12 Fletcher, Cyc. Corporations, Sec. 5702, pp. 1014-1022.

On still a third ground the resolution was invalid. It was not "a judgment arrived at in good faith" as the *De Yturbide* case requires. This is apparent from the defense of the resolution contained in paragraph 7 of each of the answers, as follows:

"* * * plaintiff for good and sufficient reasons best known to the National Council of the National Woman's Party was excluded from headquarters; they allege that such action was within their discretion and not subject to review by any other tribunal."

A case on all fours with the present one is *Stein v. Marks*, 44 Misc. 140, 89 N. Y. Supp. 921 (Sup. Ct. N. Y. Co., 1904). There the court granted an injunction at the suit of members of the Excelsior Literary Society, a membership corporation, formed for literary and social purposes and to provide a clubhouse for the use of its members. The court's ruling was as follows (89 N. Y. Supp. at p. 926):

"And where the defendants interfere with the plaintiffs in the exercise of their rights as members and officers of the corporation, exclude them from the rooms, prevent their attending meetings and voting, assume control of the corporation and divert its property, a suit in equity will lie. *Fay v. Supreme Tent*, 38 Misc. Rep. 427, 77 N. Y. Supp. 994."

The court's reasoning was that (89 N. Y. Supp. at p. 942):

"* * * in the case of a corporation the rights of the members are dependent upon the powers of the corporation derived from the state as set forth in its charter or certificate of incorporation, the by-laws adopted in conformity therewith, and the statutes regulating such corporation. * * * The fact that the plaintiffs have not been steadfast in their political allegiance [as required by a by-law which the court finds invalid] * * * will not deprive them of their statutory rights as members of the corporation. * * *"

II.

Appellant has a property interest which the court will protect

The court below had no difficulty in concluding that the "resolution" was invalid, but reached the conclusion that the complaint should be dismissed solely on the ground that, even as a court of equity, it was without power to afford relief because no "property rights" were involved. We believe the court below was fundamentally in error.

The general principle of equitable jurisdiction to protect rights or interests in property is well stated in 3 Pomeroy, *Equity Jurisprudence* (5th Ed. 1941), Sec. 1338:

"... Wherever a right exists or is created, by contract, by the ownership of property or otherwise, cognizable by law, *a violation of that right will be prohibited*, unless there are other considerations of policy or expediency which forbid the resort to this prohibitive remedy. *The restraining power of equity extends, therefore, through the whole range of rights and duties which are recognized by the law ...*"

The decisions have established that membership in a corporation which owns property used by the members carries with it a property interest which the courts will protect, even though it be a non-stock, non-profit corporation.

Implicit recognition of this interest was given in *De Yturbide v. Metropolitan Club*, 11 App. D. C. 180, quoted above, pp. 8-9. While that action was for mandamus, any former distinction in relief dependent on the type of action has been abolished by the Federal Rules of Civil Procedure, which united into one form of action all suits of a civil nature (Rules 1, 2, 81b).

Similar recognition that a property interest is involved in situations of the sort here presented is contained in the decision in *Stein v. Marks*, 44 Misc. 140, 89 N. Y. Supp. 921 (Sup. Ct. N. Y. Co., 1904), quoted above, p. 11, where an injunction was granted at the instance of members of a

literary society which had clubrooms. In that case the court cited *People v. St. Franciscus Ben. Soc.*, 24 How. Prac. 216, a case involving a membership corporation, and quoted from it as follows (89 N. Y. Supp. at p. 926):

“The defendant was organized and incorporated for charitable and benevolent purposes under a statute of the state, and it is possessed of property and funds in which the relator has an interest, and the law protects that interest * * *.”

And in *Barry v. The Players*, 147 App. Div. 704, 132 N. Y. Supp. 59 (1911), affirmed 204 N. Y. 669, 97 N. E. 1102 (1912), a writ of mandamus was granted to reinstate the relator to membership in an incorporated social club, although no pecuniary rights were involved.

In a Virginia case, *Jones v. Rhea*, 130 Va. 345, 107 S. E. 814 (1921), the court held that members of the Westmoreland Club, an incorporated club for social purposes, had property interests which gave them standing to appeal from an order entered in proceedings before the Chairman of the State Corporation Commission approving a merger agreement of that club with another incorporated social club. The court said:

“Membership in a social club entitles the member to certain social opportunities and enjoyments, and affords him an interest, though not a transmissible interest, in the club property.”

Similarly, it was held in *Kline v. Livingston Club*, 177 Pa. 224, 35 Atl. 606 (1896), that a member of an incorporated club had a property interest which entitled him to bring suit to enjoin the club's officers from buying and furnishing liquor to club members, which action plaintiff alleged would violate the State license laws respecting the sale of liquor, and imperiled plaintiff's property rights. The court said:

“The purpose of the bill is to enjoin defendant from the commission of an alleged indictable misdemeanor,

because the misdemeanor, if committed, will probably damage his property rights. A bill having for its sole purpose an injunction against crime or misdemeanor, it is well settled, does not lie; but it is just as well settled that equity will interfere if the alleged criminal acts go further, and operate to the destruction of or diminution of value of property."

The following description of the relation of a member to an incorporated social club was given by the court in *Flaherty v. Manufacturers' Club of Philadelphia*, 104 Pa. Super. 546, 159 Atl. 209 (1932), in a suit involving claims by personal representatives of deceased members of the Manufacturers' Club:

" . . . He had all the rights of a life member with such member's equal undivided share in all its property; he could have claimed it on dissolution during his lifetime . . .

" . . . The member, during life is a part owner of its property, not a creditor . . . ; but on his death, his interest as a member of the club ceases . . . "

The property interest of a member was also recognized in *Hardt v. McLaughlin*, 25 F. Supp. 684 (E. D. Pa. 1937), in a suit to recover club dues tax, the court saying:

"We start with the proposition that membership in any club involves certain basic payments (usually annual) which, at the least, gives rights of ownership in the club property and in the government of the organization."

In *Holcombe v. Learitt*, 124 N. Y. Supp. 980 (Sup. Ct. Erie Co. 1910), the court denied an application to vacate a temporary injunction which had been secured by church members against a church committee who threatened to expel all members of the church who favored new by-laws. The court stated:

"The defendants have refused to consent that Parker be retained, or that dismissals from membership shall cease until after January 18, 1910. The law of this

state does not allow a governing body to arbitrarily expel members of an incorporated church, where property rights are involved. And since only members of the church shall be eligible to election as trustees or directors, the plaintiffs have argued the object of expulsion becomes apparent.

"The court recognizes that all questions of faith, doctrine, and discipline belong exclusively to the church and its spiritual officers, and that the question of church membership is purely ecclesiastical. It is not designed by the refusal to vacate this injunction at this time that these rights shall be interfered with. Only so far as their power is exercised as a pretext for the purpose of depriving individuals of their membership, so that their property rights fall with expulsion, ought the court to interfere to preserve and protect the same."

Several New Jersey cases have held that members of a church which is incorporated have a property interest in the church building or other land held by the corporation which gives them standing to invoke the aid of equity. Thus in *Barna v. Kirczow*, 71 N. J. Eq. 196, 63 Atl. 611 (1906), where members sought an injunction against other members who had allegedly locked them out of the church building and refused to permit them to use it, the court said:

"The charges in the bill filed in this suit made a case cognizable in equity. If the defendants were closing this church building against the members of the association who were cestui que trustent for whom the property was held in trust, a proper case for the intervention of equity arose. *Morgan v. Rose*, 22 N.J. Eq. 583; *Whitecar v. Michenor*, 37 N.J. Eq. 6; *Everett v. Trustees of Church*, 53 N.J. Eq. 500, 32 Atl. 747."

In *Everett v. Trustees of First Presbyterian Church*, 53 N.J. Eq. 500, 32 Atl. 747 (1895), a church member was held to be entitled to call the incorporated trustees of the church to account for a breach of trust in alleged misuse of the parsonage house. The court held that members of the church had a beneficial right in the property which, in legal

contemplation, has a pecuniary value entitling them to resort to the civil courts to protect them. These decisions were followed in *Mathis v. Holmes*, 134 N.J. Eq. 186, 34 A. (2d) 645 (1943).

The English courts afford remedial relief in cases of wrongful expulsion of members from social clubs if the club owned such property as a house or furniture for the use of its members. Note, 37 Yale L. J. 368 at 373; *Fisher v. Keane*, 11 Ch. D. 353 (1879); *Labouchere v. Earl of Wharncliffe*, 13 Ch. D. 346 (1879); *Dawkins v. Antrobus*, 17 Ch. D. 615 (1881); *Young v. Ladies Imperial Club, Ltd.*, [1920] 2 K.B. 523; *D'Arcy v. Adamson*, 29 T.L.R. 367 (1913). The English cases make a distinction which is not important here; they refuse to allow specific relief in the case of members of a proprietary club whose property is owned, not by the club, but by proprietors who allow the members to make use of it. *Bath Club Case*, 70 Sol. J. 828, 90 J.P. 436, 162 L.T. 69 (1926); *Baird v. Welk*, 44 Ch. D. 661 (1890).

These holdings and statements of the courts are repeated in the statements of the leading text-writers. Pomeroy, in his *Equity Jurisprudence* (5th ed.) Vol. 4, p. 946, is typical. He states:

“ * * * the improper or unlawful expulsion of a member from a voluntary association without good cause, or in violation of its by-laws, may be restrained by injunction.”

To the same effect is *Fletcher on Corporation*, Secs. 5700, 5704, 5706. There is also a Note in 37 Yale Law Journal 368, *Protection of Membership in Voluntary Associations*, which reviews the authorities and comes to the same conclusion.

The Yale Law Journal note, commenting on the fact that in several cases the courts have extended protection to the members of voluntary associations without even discussing “property rights”, suggests that “property” rights are not a *sine qua non* of equitable relief. It cites two District

of Columbia cases, *Taylor v. Jackson*, 50 App. D. C. 381, 273 Fed. 345 (1921), and *United States ex rel. Johnson v. First Colored Baptist Church*, 56 App. D. C. 324, 13 F. (2d) 296 (1926). The court held in each case that no temporal rights were involved but that it must inquire to see if there was substantial compliance with church rules in expelling a member. See also *Green v. Obergfell*, 73 App. D. C. 298, 307; *Stevenson v. Holstein-Friesian Assn. of America*, 30 F. (2d) 625 (C.C.A. 2d, 1929); *Medical Society of Mobile County v. Walker*, 245 Ala. 135, 16 So. (2d) 321 (1944); *Weatherly v. Medical & Surgical Society*, 76 Ala. 567; *State v. Georgia Medical Society*, 38 Ga. 608, 95 Am. Dec. 408; *State v. Milwaukee Chamber of Commerce*, 47 Wisc. 670, 3 N.W. 760. We need not go so far in the present case, of course, since plaintiff here has, undoubtedly, a property right—the right to the uninterrupted use of the headquarters, on the same basis as any other member—which is a valuable right for which she paid \$1000, and which clearly is similar in nature to the rights which the courts have protected in the cases cited.

Appellees relied strongly in the court below on the decision of this Court in *United States ex rel. Noel v. Carmody*, 80 U. S. App. D. C. 58, 148 F. (2d) 684 (1945), as establishing the proposition that a court will not interfere to protect the rights of a member in a non-stock, non-profit corporation, where the officers and members are unremunerated and the corporation does not deal with property except incidentally. The decision clearly makes no such broad rule, and is inapplicable on its facts to the case at bar. The action was *quo warranto*, and it was dismissed even though there may not have been “technical correctness” or “meticulous observance” of the by-laws of the Bar Association, in view of the fact that there was “no doubt that” Carmody was “the voluntary choice of the overwhelming majority”. There, the issue as to who was the proper President of the Bar Association did not, in truth, affect any property right of the plaintiff Mr. Noel—indeed, no right of any sort, or even any “privilege”. Mr.

Noel, who had not been a candidate, simply sought the determination of the validity of the election in order to vindicate what he thought to be "due process". Had Mr. Noel, together with all members "who had identified themselves with his insurgent group" been excluded from using the facilities of the Bar Association, such as its library, or expelled from membership, the case would have been like the present one, and in such a case it is clear from what the Court of Appeals said that it would not have tolerated such discriminatory, vengeful, conduct, and that it would have given relief. The Court in fact speaks of the right to relief in cases where the action is "contrary to fundamental democratic procedure".

III.

Appellant is entitled to injunctive relief.

The court below denied appellant's motion for preliminary injunction and prayer for temporary restraining order solely on the basis of its erroneous conclusions of law that plaintiff and other members of the National Woman's Party had no property interest which would enable a court to grant relief. The complaint was dismissed for failure to state a claim upon which relief could be granted. Yet the court's findings of fact establish that plaintiff is entitled to injunctive relief.

The injury being done to appellant and hundreds of other members of the Party by their exclusions from the Headquarters Building is certain and irreparable. It cannot be measured in money. They are being deprived of the use of the Party's Headquarters, with its facilities for work, meetings and the effective organization of the efforts of the members in working for the purposes of the Party during a period when, with the Equal Rights Amendment under consideration in Congress, they could help to bring to fruition a goal of their life's work. The injustice being done to them by appellees can never be compensated for.

On the other hand, it is difficult to see how any damage

could result to appellees if appellant were not excluded from the Headquarters.

With such considerations before it, the court below erred in not entering a preliminary injunction and a temporary restraining order. The considerations which should guide the district court in refusing or granting a preliminary injunction were expressed as follows by the Supreme Court in *Ohio Oil Co. v. Conway*, 279 U.S. 813:

“Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable if the application be denied and the final decree be in his favor, while if the injunction be granted the injury to opposing party, even if the final decree be in his favor, will be inconsiderable, or may be adequately indemnified by a bond, the injunction usually will be granted.”

This decision has been followed in many cases in the Federal courts, and represents the present law on the subject.

The Court of Appeals for the District of Columbia, having regard for similar considerations, reversed a decree refusing an injunction *pendente lite* to restrain the sale of real estate under a deed of trust. *Phillips v. Sager*, 51 App. D.C. 103. It remanded the cause with directions to grant the injunction, finding that

“Little or no injury can flow from such a course, while great injury can result from the failure of the court to interpose a restraining hand.”

The fact that appellant has no legal title to the Headquarters from which she has any remedy at law is a compelling reason for the granting of injunctive relief. It is said in 4 Pomeroy, *Equity Jurisprudence* (5th Ed. 1941), Sec. 1339:

“ . . . It may therefore be stated as a general proposition, that whenever the . . . equitable remedy of enforcing trusts or fiduciary duties concerning specific property, or of enforcing any other equitable estates,

interests, or claims in or to specific property, *requires the aid of an injunction*, a court of equity has jurisdiction, and will exercise that jurisdiction, to grant an injunction, either pending the suit or as a part of the final decree, to restrain a breach of trust or of fiduciary duty, or to restrain an alienation, transfer, assignment, encumbrance, or other kind of dealing with the property, which would be in violation of the trust or fiduciary duty, or in fraud of the complainant's rights, and which would therefore interfere with and prejudice the ultimate remedies to which he may be entitled with respect to such property. The particular instances to which this doctrine is applied are almost numberless, and extend through the entire range of equitable remedies against mistake and fraud, or to enforce trusts and fiduciary duties, or to establish and enforce other equitable estates, interests, liens, and primary rights in and to specific property of any kind or form."

CONCLUSION.

Wherefore, appellant respectfully submits that this Court reverse the judgment of the court below, with directions to enter a preliminary injunction against appellees Forrest, Hadley, Keebler, Mills, Beale, Spinks and Wadden, and a temporary restraining order against all other appellees.

Respectfully submitted,

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Attorneys for Appellant.

August 29, 1947.

BRIEF FOR APPELLEES

IN THE
United States Court of Appeals
DISTRICT OF COLUMBIA *United States Court of Appeals
for the District of Columbia*

No. 9555 **FILED** SEP 25 1947

LAURA M. BERRIEN, *Appellant,*

Joseph W. Stewart

CLERK

v.

ANITA POLLITZER, ET AL., *Appellees.*

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*Attorney for Meta Grace Keebler,
Lucia Hanna Hadley,
Samuel L. Mills, and
Olive Beale,
Appellees.*

JOHN H. CONNAUGHTON,
*Attorney for Dorothy Spinks, and
Claire Wadden,
Appellees.*

ALBERT E. CONRADIS,
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Appellee.*

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9555

LAURA M. BERRIEN, *Appellant*,

v.

ANITA POLLITZER, ET AL., *Appellees*.

BRIEF FOR APPELLEES.

COUNTER-STATEMENT OF CASE.

In important instances material facts in this case are disputed. It is not conceded that appellant's suit to enjoin appellees from refusing her access to and use of the Headquarters Building of the National Woman's Party is on behalf of many others similarly situated with herself (R. 11, 13). It is not conceded that the appellant has a right of entry as alleged (R. 13). It is not conceded that the insurgent group represents two-thirds of the membership of the organization (R. 13).

The suit, No. 530-47, *National Woman's Party v. Pollitzer, et al.*, referred to in appellant's brief, included many of the defendants named in this suit. It was filed prior to

the instant suit to determine who are the officers and National Council members of the National Woman's Party, and contingent upon that, ancillary relief is sought in the way of accounting and injunction (Complaint, R. 5). Appellant was not named as a party to that suit, yet a reading of the complaints in both suits will show that the relief she seeks here is ancillary to the relief sought in the first suit (R. 12).

The merits of the first suit are not involved here, but a statement of the points involved in that suit is essential to correct understanding of the instant suit. Appellees point out that the alleged convention of January 10, 11 and 12, 1947, relied on by plaintiff in the first suit, was without authorization under the constitution and by-laws of the National Woman's Party, and therefore invalid and not binding upon the members of the organization. Said constitution and by-laws provide only for holding conventions and elections biennially (Pl. Exh. 2, Art. IX, R. 46), and that the term of office of those elected at such conventions *shall be* a two-year term and/or until their successors are elected (Pl. Exh. 2, Art. IV, R. 44). It is admitted by appellant that the last election was held in 1945 (R. 38), and it is alleged by appellees that their term of office has not expired (R. 11, 12, 14). Appellant concedes that these duly elected officers and National Council members, as such, are in possession, and have control, of the Headquarters Building, property, funds, seal, etc., of the National Woman's Party (R. 5), and also concedes that the propriety of their holding is not questioned for the purposes of this suit (R. 7). The alleged convention of January 10, 11 and 12, 1947, was illegal and void on other grounds also, which cannot be gone into here, but will be fully brought out at the trial of said suit.

Under the constitution and by-laws of the Party the National Council, in control of the property, funds, etc., of the Party (R. 5), duly elected to office (R. 38), and whose terms of office have not expired (R. 11, 12, 14), and who

are charged with the management of the affairs of the corporation (Pl. Exh. 2, Art. V, R. 44) had full authority to take the action complained of when they passed the resolution of January 29, 1947, temporarily excluding appellant from Headquarters (Pl. Exh. 2, Art. XVI, R. 48; Finding 3, R. 16), Fox's Parliamentary Usages permitting more drastic action, as will appear later herein. There is no provision in the constitution and by-laws of the National Woman's Party that requires notice of the meeting, at which the resolution complained of was passed, to be given to the appellant.

Nothing in the record supports the statement by appellant (her brief 4) that all persons, alleged to be two-thirds of the membership of the Party, were excluded from Headquarters. It is denied by appellees (R. 13). The trial Court found only that "certain others" besides plaintiff were excluded (Finding 4, R. 17).

There is no allegation in the complaint that appellant has any property right to be protected by this Court, and no testimony offered by the appellant established that fact. The Court therefore properly dismissed the complaint for failure to state a cause of action.

SUMMARY OF ARGUMENT.

I.

Appellees are members of the National Council of the National Woman's Party, the highest governing body of the organization. In excluding the appellant, temporarily, from the Headquarters Building, they were within the scope of authority vested in them by the constitution and by-laws of the organization.

II.

The District Court of the United States for the District of Columbia, is without jurisdiction to determine an issue such as is raised in this case unless there is in appellant a property right to be protected.

III.

The temporary deprivation to appellant and certain others of the use of the Headquarters Building has in no way hampered the work for which the Party was organized. No injury has been sustained by appellant, or any other member, by reason of such exclusion. Appellant is not entitled to the relief she seeks.

ARGUMENT.

I.

Appellees who are members of the National Council of the National Woman's Party acted within the scope of authority vested in them by the Constitution and By-Laws of the organization when they passed the resolution temporarily excluding appellant and certain others from the headquarters building.

The constitution and by-laws of the National Woman's Party, Article V, provide: "The control and management of the affairs and funds of the National Woman's Party shall be vested in a National Council and Executive Council and Advisory Council * * *."

Section 2 of the same Article provides that "the administration and management of the affairs and funds of the organization shall be vested in the Executive Council in the intervals between meetings of the National Council."

Section 3 of this Article states who shall compose the membership of the Advisory Council. Its duties are not defined.

Article XVI of the Party's constitution and by-laws provides that "Fox's Parliamentary Usages shall be the parliamentary authority for this organization subject to such rules as may be adopted by the organization in convention assembled, or by the National Council."

That the National Council was acting within the scope of its authority when it passed the resolution complained of, is established by Fox's Parliamentary Usages, page 40:

"Should a member be deemed guilty of immoral conduct, or of conduct prejudicial to the best interests of the society or of its members, a vote of censure may be passed or he may be asked to withdraw from membership." In this same paragraph it is stated that: "In some organizations provision is made in the by-laws for the trial of members and the expulsion of such as may be found guilty of charges preferred against them. This is perhaps possible if persons upon joining the society or at a later time have agreed to abide by the decision of such tribunal * * *."

It is important to note that there is no provision for trial in the constitution and by-laws of the Party. It should also be noted that no demand for trial or hearing of any kind was ever made by the appellant, or any other member of the small group of insurgents with her.

It is further important to note that *neither the appellant nor any other member of the Party was expelled*. The action taken by the National Council was temporary, pending a decision on the question in dispute, namely, who are the officers and National Council of the National Woman's Party.

The alleged convention on January 10, 11, 12, 1947 in this city, at which the insurgent group claim to have elected officers and a National Council, was held in defiance of the requirements of the constitution and by-laws of the organization, which provide in Article IX: "A national convention shall be held biennially, the date and place to be determined by the National Council." To leave no doubt about what they mean by the word "biennially", the framers of the constitution and by-laws, in Article IV, provide "* * * officers shall be elected at the biennial national convention and *shall* hold office for a period of two years and/or until their successors are elected." Exactly similar is the provision for the term of office of the elected members of the National Council. Reading these provisions together, clearly the framers of the constitution and by-laws intended that officers should serve for two years, and until their suc-

cessors were elected, the use of the words "and/or" referring only to a possible emergency developing during said period, such as a necessary resignation, etc. The officers and National Council holding office on and prior to January 10, 1947, it is admitted by appellant, had been duly elected in 1945. Their terms of office had not then, and have not now expired.

The National Woman's Party is a corporation. It is not possible to have within the organization two different sets of officers, two National Councils, etc., functioning at the same time. And argument is not needed to show that should this be allowed it would disrupt the organization. Yet immediately following their alleged convention, and with full knowledge that it was unconstitutional and invalid, and thereafter without waiting for the outcome of their aforesaid law suit filed to determine who are the officers of the said Party, the said insurgents proceeded to undertake to function as if validly and duly elected. Faced with this emergency, the National Council at its aforesaid meeting of January 29, 1947, passed the resolution complained of under the compulsion of protecting the property, interests, funds, and members of the corporation, and to prevent its disruption.

The action complained of is not contrary to the constitution and by-laws of the organization, as already shown, nor to the law of the land, as will appear later herein. Further, it was the considered action of the Council, as will appear from the minutes of the said National Council offered in evidence by the appellant. These minutes, to save expense, were not included in the joint appendix, but are available to the Court.

The appellant, it is submitted, was not deprived of a property right. She was deprived temporarily only of a privilege, which at that time, and all times was and is, conditioned upon conduct. Without such qualification, written or unwritten, no organization could continue to exist.

The case of *De Yturvide v. Metropolitan Club*, 11 App. D. C. 180 (1897), cited by appellant, does not help her. The

relief sought there, which was reinstatement to membership after expulsion, which is not the instant case, was denied. Appellant charges in her brief (Page 9) that the *De Yturbide* case points out three requisites to valid corporate action for the disregard of any one of which the Courts will interfere: (1) authority under the by-laws, (2) a regularly conducted trial, and (3) a judgment arrived at in good faith. Appellees, as has been shown, have fully complied with the first and third requirements, and the second has no application to this case. The minutes of the meeting of the National Council for January 29, 1947, were offered in evidence by appellant, and minutes of said National Council's meetings, January 28 through February 2, 1947, were submitted with the record by appellant without objection by appellees. They conclusively establish that appellees arrived at their judgment in good faith.

In the case of *Stein v. Marks*, 44 Misc. 140, 89 N. Y. Supp. 921 (Sup. Ct. N. Y. Co., 1904), cited by appellant, the points in issue are not similar to those in the instant suit. There the corporation sought to deprive members of their right to vote, a duly authorized meeting had not been held, there was a question of property of the corporation being diverted. The facts render it inapplicable to this case.

II.

Appellant does not have a property right to be protected that will bring her case within the jurisdiction of the court.

In support of the jurisdiction of the Court appellant cites Secs. 11-301 and 306 of the Code of the District of Columbia (1940).

The law she invokes is as follows: (*Italics ours*)

Sec. 11-301—"The District Court of the United States for the District of Columbia shall have general jurisdiction in law and equity * * *."

Sec. 11-306—General Jurisdiction. "Said Court (*except as otherwise provided in this title*) shall have cognizance

of all crimes and offenses committed within said District and of all cases in law and equity between parties, both or either of which shall be resident or be found within said District * * *."

The other provisions in this Title referred to in Sec. 306 bearing on the jurisdiction of the Court, are as follows:

Sec. 11-325. Equity Court term—Jurisdiction. "The equity court shall have jurisdiction of all causes heretofore cognizable in equity and of all petitions for divorce, except where the relief sought is hereby authorized to be given by the probate court only, and shall have the special powers herein provided. *And the practice in said court shall be according to the established course of equity and procedure and the rules established by the said District Court of the United States for the District, not inconsistent with law.*"

(Note: Provisions of the Judicial Code, according to *Tuckerman v. Mearns*, 49 App. D. C. 153, 262 Fed. 607, are superior to any rule of procedure inconsistent therewith formulated under authority of this section.)

Sec. 11-324. District Court term—Jurisdiction. "The District Court of the United States for the District of Columbia shall have and exercise *the same powers and jurisdiction* as the other District Courts of the United States * * *."

Sec. 11-315. Writs. "The said District Court of the United States for the District of Columbia may, in its appropriate special terms, issue writs of quo warranto * * * injunction, prohibitory and mandatory * * * and all other writs known in common law and equity practice *that may be necessary to the effective exercise of its jurisdiction* * * *."

T. 28, Sec. 41, Subd. (1) U. S. C. A. (Supplement): Jurisdiction of District Courts. * * * This title confers original jurisdiction upon the District Courts of *all suits of a civil nature, at law or in equity*, "where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000, and (a) arises under the constitu-

tion or laws of the United States * * * or (b) is between citizens of different states, or citizens of the District of Columbia, Territory of Hawaii," etc.

The above section of the Judicial Code has reference to District Courts generally throughout the United States. And the District Court of the United States for the District of Columbia is a District Court of the United States (*U. S. v. Balto. & O. R. Co.*, 26 App. D. C. 581).

Interpreting this law, cited by appellant, are the following cases:

Purcell v. Summers, 34 F. Supp. at p. 424-425 (Decision of District Court of S. C. handed down July 25, 1940):

"In injunction proceedings * * * it becomes necessary to determine whether the required jurisdictional amount in controversy is present. But certain well established principles have now been embedded in our law which must be followed in seeking the answer to that question. These established principles are two in number.

First: The right which the plaintiff seeks to protect is the matter in controversy;

Second: The right which it is sought to protect must be a right of property, and it must be such that it has a value which can be proved and calculated in the ordinary mode of a business transaction."

Sup. Ct. U. S.—*N. Y. Cotton Exchange v. Hunt*, 205 U. S. 322, an injunction proceeding, held that there must be a property right in the plaintiff and that the value of that right must not be lower than the required jurisdictional amount. To the same effect is *Board of Trade of Chicago v. Christie Grain & Stock Co.*, 198 U. S. 236.

To the same effect, also, is *Emmons v. Smitt*, 149 F. (2d) 869, a decision of the Michigan Circuit Court of Appeals, rendered June 25, 1945, in a suit to enjoin state bar proceedings against the plaintiff. In upholding the action of the District Court in dismissing the suit, the appellate court said that no District Court has jurisdiction of an ac-

tion brought under the constitution and laws of the United States unless the amount in controversy exceeds exclusive of interest and costs, the sum of \$3,000. In this case, as in the instant suit, the plaintiff had alleged no amount, and the Court said: "We seek in vain for a basis for jurisdiction of the District Court over plaintiff's action in so far as it seeks to secure to him the right to practice his profession. * * * The plaintiff's right to practice law * * * is not a property right but a privilege." To the same effect is *People v. Speiser*, 292 N. Y. S. 481.

In *Words & Phrases*, Vol. 38, page 652 (1940), a "right of property" is defined as involving the power to sell and dispose of it, as well as use and enjoy it.

Bouvier's Law Dictionary defines a "property right" as "The right and interest which a man has in lands and chattels to the exclusion of others * * * so that property considered as an exclusive right to things, contains not only a right to use those things but a right to dispose of them either by exchanging them for other things, or by giving them away to any other person without consideration, or even throwing them away."

Appellant's alleged interest is not sufficient to bring her case within the jurisdiction of the Court.

The general rule is that if a benevolent association confines itself to the powers vested in it, and acts in good faith under by-laws adopted by it, and does not violate the laws of the land or any pecuniary or property right of the member of the association the courts have no authority to interfere with the society by directing or controlling it as to questions of internal policy, but will leave the society free to carry out any lawful purpose in accordance with its rules and regulations.

7 C. J. 1116, Sec. 80;

Golden Star v. Worrell, 158 Ga. 309, 123 S. E. 106;

Barthell v. Zachman, 36 S. W.-2, 886, 162 Tenn. 336;

Campbell v. B. L. of E., 165 Va. 8, 181 S. E. 144;

Grand Lodge K. of P. v. Taylor, 79 Fla. 441, 84 So. 609;

State ex rel. Buckner v. Landwehr, 261 SW 699 (Mo.);
 10 C. J. S. 311, Sec. 65;
Wright v. Minnesota Mutual Life Ins. Co., 193 U. S. 657 at 665;
Watson v. Jones, 13 Wall. 679, 80 U. S. 679 at p. 728.

Reference to the appellant's complaint in the lower Court, paragraphs 1, 7 and 8, and her second prayer, will show that there is no allegation of a property right involved in her suit. At the hearing she testified that she had paid a membership fee of \$1,000, and that she had "contributed" sums and services which she believed amounted to well over \$3,000 altogether. But argument is not needed to show that she retained no property right in the membership fee, and none in money or services "contributed" to the organization.

In C. J. S. 7, Sec. 25, at page 65, is the following:

As a rule the courts will not interfere unless the suspension or expulsion will result in an invasion of the member's civil, pecuniary, or property rights. Such rights the courts will protect; but to entitle a member to protection he must have a severable interest in the property of the association; a property right which is merely incidental to his membership and which ceases with it is not sufficient.

Cited in the notes under this section, and referring to the above is the following:

A member has no such severable right in the funds of a voluntary unincorporated association, accruing from initiation fees, dues, and assessments, as will authorize a court of equity to interfere to prevent his wrongful suspension or expulsion from the association. (*Rodgers v. Tangier Temple*, AAONMS, 198 N. W. 873, 112 Neb. 166.)

To the same effect are:

Franklin v. Burnham, 40 Misc. Rep. 566, 82 N. Y. Supp. 882;

Lawson v. Hewell, 118 Cal. 613, 50 Pac. 763;
Local Union v. Barrell, 19 R. I. 663, 36 Atl. 5.

In the case of *Rodger v. Tangier Temple*, above cited, the facts are similar to those in the instant case, and the court held:

It has long been established as a general principle of equity jurisprudence that jurisdiction will not be taken of controversies between individuals except to protect some civil or property right, the civil right referred to being one which is granted by constitution, statute or the law of the land; and the principle has many times been applied to controversies between voluntary, unincorporated associations and their members, and relief has been denied almost without exception, where the only question involved is one of discipline of its members by the society.

To the same effect are:

Froelich v. Musicians Mutual Benefit Assn., 93 Mo. App. 383;
State v. Georgia Medical Assn., 38 Ga. 608, 95 Am. Dec. 408;
In Re Sawyer, 124 U. S. 200, 8 Sup. Ct. 482;
People v. Masonic Benevolent Assn., 98 Ill. 635;
People v. McWeeney, 259 Ill. 161, 102 N. E. 233;
Atkinson v. Doherty & Co., 121 Mich. 372, 80 N. W. 285.

The case of *Allen v. Chicago Undertakers Assn.*, 232 Ill. 458, 83 N. E. 952, holds that equity will not enjoin the expulsion of a member from a corporation organized not for profit.

See also *Crutcher v. Order of Ry. Conductors*, 151 Mo. App. 622, 132 S. W. 307.

Cases in the District of Columbia holding that a property right must be involved, are:

U. S. ex rel. Johnson v. First Colored Baptist Church, et al., 56 App. D. C. 324; 13 F. (2d) 296;
Lemmon v. Kirkland, 44 App. D. C. 512;
Grand Lodge v. Grimshaw, 34 App. D. C. 383.

Again citing from *C. J. S.* 7, Sec. 34, at page 79:

The courts will not interfere with the internal affairs of an unincorporated association so as to settle disputes between members, or questions of policy, discipline, or internal government, so long as the government of the society is fairly and honestly administered in conformity with its laws and the laws of the land, and no property or civil rights are invaded, and, under such circumstances, the decision of the governing body or established tribunal of the association is binding and conclusive and not subject to review or collateral attack in the courts.

Cited in support of this section are the following cases:

Polacheck v. Michiwaukee Golf Club, 222 N. W. 806, 175 Wis. 595;

Greenwood v. Bldg. Trades Council of Sacramento, 233 P. 823, 71 Cal. App. 159;

Harris v. Mo. Pac. R. Co. (D. C. Ill.), 1 Fed. Supp. 946;

Ala. Shaup v. Grand International Brotherhood of Locomotive Engineers, 135 So. 327, 223 Ala. 202;

Brotherhood of R. R. Trainmen v. Williams, 277 S. W. 500, 211 Ky. 638,

and other citations of cases from the states of Louisiana, Maryland, New Jersey, New York, Pennsylvania, Texas and Washington.

The judgment of the lower Court is in line with the weight of authority in this country.

As for appellant's alleged "contract", the case of *Stein v. Marks*, 44 Misc. 140, 89 N. Y. Supp. 921, cited by appellant, holds that there is no contract between a member and a corporation.

Examination of the cases cited by appellant will disclose that they are inapplicable from the standpoint of facts, or they are minority decisions as against the preponderance of the law.

The National Woman's Party, as is shown by Finding of Fact 1, R. 15-16, is a private, non-stock, non-profit cor-

poration, organized under the laws of the District of Columbia for the purpose of securing equality for women, whose officers and members serve without remuneration, and membership in which carries no financial benefit. It does not deal with property except incidentally.

In the case of *U. S. ex rel. Noel v. Carmody*, 80 U. S. App. D. C. 58, 148 F. (2) 684 (1945), a quo warranto proceeding involving the D. C. Bar Association, an organization almost identical with the organization in the instant suit, this Court said:

We have stated the case most strongly against respondent,—ignoring his contention that since two candidates were actually voted on the election was therefore valid,—because we believe that even in this view the court below properly exercised its discretion in dismissing the complaint. Had the case involved a stockholder with a financial interest in a corporation or had the election affected any property right of the relator the facts stated in the petition would have required a hearing and a decision whether the election was valid. Corporations whose principal activity is the administration of property must be held in strict compliance with their election by-laws even though an invalid election is not shown to have caused actual or probable damage to those interests. But the Bar Association does not deal with property except incidentally. Its officers and members are solely interested in unremunerated public service. Its objectives are to maintain the honor and dignity of the profession and to promote the administration of justice.

It is idle to expect that voluntary public or community service, not involving the administration of property or money, will ever be carried on with the meticulous observance of charters and by-laws required in the administration of property or money. The interest that holds community service organizations to-

gether is not property but the unselfish spirit of those willing to sacrifice their time and energy to a public cause. That interest would not be protected but destroyed by strict judicial supervision * * * in such agencies on complaint of their members. The court would find itself a constant intermeddler in community affairs serving no purpose other than to disrupt the morale and good will of voluntary organizations. To make community service as technical as business dealings would be to destroy the spirit which sustains it.

III.

Appellant is not entitled to injunctive relief.

The work of the National Woman's Party has been, and is being protected and promoted. No loss has been suffered by the organization, and no injury has been sustained by the appellant or any other member of the Party by reason of the temporary exclusion from Headquarters complained of. Appellant has not proved any loss to the organization or any injury to herself or other members.

In the case of *Ohio Oil Co. v. Conway*, 279 U. S. 813, cited by appellant, a definite injury would have been suffered by the plaintiff if collection of an increased severance tax had not been enjoined during pendency of a suit to determine its constitutionality. Otherwise, under the laws of Louisiana plaintiff could not have recovered the amount so paid. The case has no application to the instant suit.

Correspondingly, the case of *Phillips v. Sager*, 51 App. D. C. 103, cited by appellant, has no application to this case. There the basis for granting the injunction on appeal was fraud perpetrated on the plaintiff in the securing of notes and money under false representations.

CONCLUSION.

Wherefore, the appellees respectfully submit that the appellant has failed to make out a case, and the judgment of the lower Court should be affirmed.

Respectfully submitted,

OLIVE B. LACY,
*Attorney for Meta Grace Keebler,
Lucia Hanna Hadley,
Samuel L. Mills, and
Olive Beale,*
Appellees.

JOHN H. CONNAUGHTON,
*Attorney for Dorothy Spinks, and
Claire Wadden,*
Appellees.

ALBERT E. CONRADIS,
Attorney for Marie Moore Forrest,
Appellee.

REPLY BRIEF FOR APPELLANT

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

. No. 9555

LAURA M. BERRIEN, *Appellant*,

v.

ANITA POLLITZER, ET AL., *Appellees*.

Appeal from the District Court of the United States for the
District of Columbia.

*United States Court of Appeals
for the District of Columbia*

FILED OCT 3 - 1947

Joseph ...
CLERK

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Attorneys for Appellant.

October 3, 1947.

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9555.

LAURA M. BERRIEN, *Appellant*,

v.

ANITA POLLITZER, ET AL., *Appellees*.

Appeal from the District Court of the United States for the
District of Columbia.

REPLY BRIEF FOR APPELLANT.

Facts.

The appellees dispute that the suit is brought on behalf of others than the appellant, and that "the insurgent group"* represents two-thirds of the membership (Appel-

* Thus the appellees designate the appellant and all other members of the National Woman's Party who attended a convention at the Mayflower in January, 1947, or supported the holding of that convention.

lees' brief, p. 1). The facts on this point, as shown by the record, are these:

"She brings this suit in her own behalf, and on behalf of all other members of said corporation similarly situated." (Complaint, R. 3)

The resolution passed by the appellees was as follows:

"RESOLVED, that all elected and appointed members of the National Council who have identified themselves with the insurgent group be asked to resign and that failure to acquiesce within ten days of receipt of a letter to this effect will be construed as a resignation.

"Be it further resolved that *all* members of the insurgent group be temporarily excluded from Headquarters during pendency of a decision on the question in dispute." (R. 16-17).

The Court found:

"Since the passage of the resolution the defendants have deprived, and are now depriving, plaintiff and certain other members of the National Woman's Party of access to said headquarters and the enjoyment and use of the same." (R. 17).

In their answer the defendants say:

"... plaintiff for good and sufficient reasons best known to the National Woman's Party was excluded from headquarters..." (R. 13).

The testimony as to the number so excluded is as follows: There were in attendance over 200 persons at the Mayflower convention (R. 24), all of whom certainly were excluded by the terms of the resolution. There were approximately 804 dues-paying members (R. 24), so that approximately one-fourth of these were actually present. And the witness estimated that 66 per cent of the entire membership were represented by the delegates present (R. 24). There is no other testimony on the subject.

The appellees further contend that Fox's "Parliamentary Usage" authorized the passage of the resolution clos-

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ing the headquarters to "all members of the insurgent group." It should be noted that although that book is named in the Constitution of the organization as the "parliamentary authority" (R. 16, 48), no copy was introduced in evidence. If it had been introduced in evidence it would be seen that the quotation from page 40 given by the appellees on page 5 of their brief does not refer to expulsion by the governing board of an organization, but refers to action at a meeting of the members.* At p. 234 Fox says:

"A Board of Directors has only such power as has been expressly delegated to it by the organization. * * * The power which is not expressly delegated to the board is reserved by the organization."

Similar language appears at page 317.

We believe that the counter-statement needs no further reply, and respectfully refer to the statement of the case contained in our original brief.

Law.

On the broad proposition advanced in our original brief that the exclusion of appellant and others from the headquarters building was illegal and should be set aside, and that the case involves a property interest which should be protected by injunctive relief, we have nothing to add except to say that the cases cited on behalf of the appellees do not seem to support their argument on that point.

The brief of the appellees, however, is not confined to argument of the broad question of the right of an equity court to hear such a suit. They contend also that the jurisdiction of the court below was merely that of an ordinary District Court of the United States, that in such courts the

* Even as to such action by the membership, Fox only says, " * * * he may be asked to withdraw from membership. Such action should only be taken after thorough investigation." The appellees' brief omits this last sentence.

matter in controversy must exceed the sum of \$3000, and that such a sum is not involved in the present case.

That was not the decision of the court below. No such suggestion occurs anywhere in the judge's statements at the trial (R. 41, 42) or in his conclusions. (R. 17, 18). The decision below was based on the proposition that no property right at all was involved. Regardless of the decision below, however, we submit that the argument of the ~~plaintiff~~^{appellees} is fallacious for two reasons, either of which is sufficient:

1. The District Court of the United States for the District of Columbia has a general jurisdiction at law and in equity similar to that of a state court. The only exception is that if "the claimed value of personal property or the debt or damages claimed * * * *does not* exceed the sum of \$3,000" the case must go to the Municipal Court. This is not such a case.

2. Even in an ordinary District Court, the value of the matter in controversy in a class suit would be determined by its value to all of the class, in this case all who were excluded.

The District Court of the United States for the District of Columbia has two distinct jurisdictions. It has a general jurisdiction in law and in equity under Sections 11-301, 11-306, and 11-325 of the D. C. Code, similar to that of a state court. No diversity of citizenship, or other requisite for federal jurisdiction need be involved, and the statutes relating to district courts are wholly inapplicable.

Entirely distinct from this is the additional jurisdiction that the court has as a District Court of the United States under Section 11-324 of the D. C. Code. Under that section the court has "the same powers and jurisdiction as the other District Courts of the United States", no more and no less. All federal statutes relating to district courts are applicable under this jurisdiction.

The two jurisdictions are completely distinct. Thus in the recent case of *King v. Wall & Beaver*, 79 U. S. App. D. C. 234, 145 F. (2d) 377, the court pointed out:

“The District Court of the United States for the District of Columbia, as we have often said, is clothed with a two-fold jurisdiction. It has all the ordinary and usual jurisdiction of a State court in respect to matters which in a State would be exercised by a State court, and this it attains by Acts of Congress under the provisions of Section 8 of Article I of the Constitution. It likewise has all of the jurisdiction and powers of United States district courts elsewhere, and this jurisdiction is, in turn, conferred by Acts of Congress under Article III of the Constitution.”

It was held in that case that the suit could not be maintained against one defendant under the statute relating to the general jurisdiction of the court and against another defendant under the statutes relating generally to Federal district courts. If either jurisdiction is invoked it is applicable for all purposes. ^{Thus} ~~Then~~ in a suit brought under the general jurisdiction of the court, as this one was, statutes relating to the jurisdiction of district courts are inapplicable.

The only cases in law and equity which cannot now be brought in the District Court of the United States for the District of Columbia as a court of general jurisdiction are those which fall within the jurisdiction of the Municipal Court. By Section 11-755, D. C. Code, 1940, that court has been given exclusive jurisdiction

“* * * of civil actions * * * in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys fees, protest fees, and costs, does not exceed the sum of \$3000 . . .”

This language coupled with the broad general jurisdiction of the District Court of the United States for the District of Columbia creates a situation somewhat the reverse of that found in an ordinary District Court of the United

States which has jurisdiction in certain cases only "where the matter in controversy exceeds * * * \$3000." The District Court of the United States for the District of Columbia sitting as an equity court has unlimited jurisdiction, subject only to the possibility of the case falling within the exclusive jurisdiction of the municipal court if the "claimed value of personal property or the debt or damages claimed . . . does not exceed the sum of \$3000". It is not necessary for the plaintiff to establish that the matter in controversy exceeds \$3000. The defendant must establish that there is a claim for "personal property" or for "debt or damages" and that its value does not exceed the sum of \$3000.

In the only two cases of which we have knowledge where this Court has held that cases in equity fell within the jurisdiction of the Municipal Court, *Klepinger v. Rhodes*, 78 U. S. App. D. C. 340, 140 F. 2d 697, and *Rowe v. Nolan Finance Co.*, 79 U. S. App. D. C. 35, 142 F. 2d 93, there was in each case a distinct amount claimed and in each case it was less than \$3000. Thus in *Klepinger v. Rhodes*, *supra*, the plaintiff asked to have a trust impressed upon funds amounting to \$1980, or in the alternative for a money judgment. And in *Rowe v. Nolan Finance Co.*, *supra*, the appellant demanded damages of \$2000 for seizure of an automobile and an injunction against its sale. In each of these cases there was a claim for "personal property" and the "debt or damages" did not exceed \$3000, and thus they were sent to the Municipal Court.

Nothing in the language of the statute or in its legislative history suggests that it was the intention of Congress to have an injunction suit such as this tried in the Municipal Court. There are many "civil actions" for injunctions, certiorari, ne exeat, divorce, habeas corpus, quo warranto, and other cases, where no definite money value is involved. We submit that such cases are not "civil actions . . . in which the claimed value of personal property or the debt or damages claimed . . . does not exceed the sum of \$3000", within the statute. The plaintiff "claims" no property.

Nor does the plaintiff claim a "debt or damages." We respectfully submit that the language of the Municipal Court statute is wholly inapplicable, and that such suits may still be maintained, as they always have been, in the District Court under its general jurisdiction.

The ordinary District Court of the United States is a court of limited jurisdiction. It can only hear cases committed to it by statute. A controversy which involves an undetermined amount of money is not heard in the ordinary federal District Court because it is not a case where the matter in controversy "*exceeds*" \$3000. The Municipal Court for the District of Columbia is also a court of limited jurisdiction. It can only entertain civil actions in which "the claimed value of personal property or the debt or damages claimed * * * *does not exceed* the sum of \$3000." And a case involving an indeterminate amount is not one which does not exceed the sum of \$3000 any more than it is one which does exceed \$3000. The same indefiniteness in amount which might prevent such a case from being heard in an ordinary District Court will prevent it from being heard in the Municipal Court. Such a case will remain in the general unlimited jurisdiction at law and in equity of the District Court of the United States for the District of Columbia. Compare such state decisions as *Welch v. Bryant*, 157 Miss. 559, 128 So. 734; *Smith v. Kidd*, 228 S. W. 348 (Tex. Civ. App.); *Jasper County Lumber Co. v. Biscamp*, 77 S. W. (2d) 571 (Tex. Civ. App.).

Aside from the fact that the Municipal Court only has jurisdiction where the claimed value of personal property or the debt or damages claimed is less than \$3000, there is another reason why the jurisdiction of the court below should be sustained. Even if it were necessary for the plaintiff to establish that property to the value of \$3000 is involved, the fact that this is a class suit brings the value far above that amount. The Court has found that the headquarters of the National Woman's Party "consists of a valuable building worth in excess of \$100,000 and contain-

ing a valuable and unique library * * *." The evidence, as pointed out earlier in this brief, is that the suit is brought on behalf of approximately two-thirds of the members of the organization. It is obvious that the interest of these members is in value far more than \$3000. And in a class suit the value of the matter in controversy is determined by the value of the interest of all of the class.

Thus in *Gibbs v. Buck*, 307 U. S. 66 (1939), where suit was brought by members of the American Society of Composers, Authors and Publishers "on behalf of themselves and others similarly situated," the Supreme Court stated:

"* * * In view of the unchallenged facts, federal jurisdiction will be adequately established, if it appears that for any member, who is a party, the matter in controversy is of the value of the jurisdictional amount, or, if to the aggregate of all the members in this representative suit, the matter in controversy is of that value."

Conclusion.

We have attempted not to repeat anything that is in our original brief, but have confined ourselves to points brought up in or suggested by the brief of the appellees.

For the reasons stated in our original brief and in this reply, we respectfully urge that this Court reverse the judgment of the Court below with directions to enter a preliminary injunction against appellees Forrest, Hadley, Keebler, Mills, Beale, Spinks and Wadden, and a temporary restraining order against all other appellees.

Respectfully submitted,

SPENCER GORDON,
CHARLES A. HORSKY,
ELEANOR SESSOMS,
Attorneys for Appellant.

October 3, 1947.

STATUTES.**D. C. Code, 1940.**

“§ 11-301. Constitution—Court of general jurisdiction—Assignment of justice for condemnation cases.

“The District Court of the United States for the District of Columbia shall have general jurisdiction in law and equity, * * *.”

“§ 11-306. General jurisdiction.

“Said court (except as otherwise provided in this title) shall have cognizance of all crimes and offenses committed within said district and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States.”

“§ 11-324. District Court term—Jurisdiction.

“The District Court of the United States for the District of Columbia shall have and exercise the same powers and jurisdiction as the other District Courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress, and of all proceedings instituted in exercise of the right of eminent domain.”

“§ 11-325. Equity court term—Jurisdiction.

“The equity court shall have jurisdiction of all causes heretofore cognizable in equity and of all petitions for divorce, except where the relief sought is hereby authorized to be given by the probate court only, and shall have the special powers herein provided. And the practice in said court shall be according to the established course of equity and procedure and the rules established by said District Court of the United States for the District, not inconsistent with law.”

“§ 11-755. Jurisdiction—Criminal and civil branch—Exclusive in certain actions—Service of process—Judgments—Duration—Docketing—Fees.

“(a) The Municipal Court for the District of Columbia, as established by this subchapter shall consist of a criminal and a civil branch. The court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Police Court of the District of Columbia or by the Municipal Court of the District of Columbia or the judges thereof on the effective date of this subchapter and in addition the said court shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys’ fees, protest fees, and costs, does not exceed the sum of \$3,000 and, in addition, shall also have exclusive jurisdiction of such actions against executors, administrators and other fiduciaries: * * *”

U. S. Code, Title 28.

“Section 41. (Judicial Code, section 24, amended.) Original jurisdiction. The district courts shall have original jurisdiction as follows:

“(1) United States as plaintiff: civil suits at common law or in equity. First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States: or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory, or (c) is between citizens of a State and foreign States, citizens, or subjects. * * *”

